IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

VS. **CIVIL ACTION NO.** 3:22-cv-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND, NANCY BULLARD **DEFENDANTS**

COMPLAINT

COMES NOW the Plaintiff through counsel and files this her Complaint and, in support thereof would show unto the Court as follows, to-wit:

I. The Parties

1. Plaintiff, Ms. Jessica Holly, is an adult resident citizen of Vicksburg, Warren County, Mississippi within the Southern District of the State of Mississippi.

2. The defendant, the Vicksburg Warren School District, is being asked to waive service of a summons. If it chooses not to waive, it is a "state-created governmental organization that is subject to suit" and may be served a copy of the summons and complaint in accordance with Fed. R. Civ. P. 4(j)(2)(A) by serving a copy of each on its Chief Executive Officer, the Superintendent of the District.

3. The defendants, Bryan Pratt, Alonzo Stevens, James Stirgus, Jr., Kimble

Slaton, and Nancy Bullard, are persons all believed to be residents domiciled within the Southern District of the State of Mississippi. They are each being asked to waive service of summons. If they choose not to waive, they will be served with process and a copy of the complaint by one of the methods of service authorized by Fed. R. Civ. P. 4(e). These defendants are being sued in their individual capacities.

II. Jurisdiction And Venue

4. This case is brought under *42 U.S.C. §1983.* This Court has general federal question jurisdiction under *28 U.S.C. §1331.* The court has supplemental jurisdiction under 28 U.S.C. §1367 to hear the state law claims alleged. The defendant school district is physically located within the Northern Division of the Southern District of Mississippi. Venue is therefore proper in this Court pursuant to *28 U.S.C. §1391(b)(1).*

III. The Facts

5. Prior to December 15, 2020, Jessica Holly worked in the Vicksburg-Warren School District for approximately twenty years with no disciplinary actions. By a December 15, 2020, notice letter of termination, Ms. Holly was terminated from her job as Assistant Principal at the Vicksburg Intermediate School.

6. The District fired Jessica Holly by letter dated December 15, 2020. The letter of termination makes clear the sole reason for her termination was taking medical leave for the single day of Monday, December 14, 2020. To be clear, Jessica Holly took medical leave on the advice of her treating physician on Monday, December 14th. She was fired the next day, Tuesday, December 15th. The letter of termination, in pertinent part, stated:

> The Vicksburg Warren School District values its employees and hoped that you would have been able to return to work. *The decision to terminate your employment in no way reflects*

> *upon your job performance*, and you...leave your District employment in good standing. In the future, if you are able to return to work we encourage you to re-apply for any position for which you are qualified. (emphasis added)

7. She received the letter of termination on Thursday, December 17, 2020, at approximately 2:30pm. The District offered Ms. Holly no pre-deprivation due process. The Board met that same day at 5:30pm and voted to terminate her employment.

8. On December 22, 2020, Ms. Holly took her hearing request letter for a *post- deprivation* due process hearing to the Superintendent's Office around 3:30pm. No one was in the office so she left her letter on the desk of Ms. Annie Reynolds, the Superintendent's secretary.

9. The hearing request letter of December 22, 2020, in pertinent part, says: "I am requesting a full due process hearing on the termination of my employment from the Vicksburg Warren School District."

10. From January 15, 2021, through February 8, 2021, the attorneys for the parties attempted, albeit unsuccessfully, to come to terms for a post-deprivation due process hearing. The district never moved from its position that Ms. Holly had already been afforded all the process due to her in the form of various contacts by school personnel telling her that her FMLA ("Family Medical Leave Act") leave was ending on December 11, 2020; but nevertheless, she could have some form of a post-deprivation hearing within "parameters" to be set by the district. Plaintiff contends these "parameters" were to be limited to a short time for Ms. Holly to make a statement to the board.

11. Ms. Holly's position remained the same, viz. – she was entitled to a full *post-deprivation* due process hearing – meaning: (a) she, at a minimum, be advised of the

cause or causes for her termination *in sufficient detail to fairly enable her to show any error that might exist*; (b) that she be advised of the names and *the nature of the testimony of witnesses against her;* and, (c) *at a reasonable time* after such advice she be accorded a *meaningful opportunity* to be heard in her own defense including the calling of witnesses, cross-examining witnesses, making use of any relevant evidence, paper or otherwise, and, arguing her case to the board.

12. Likewise, Holly's termination was subject to published rules and regulations and an established statutory procedure for the termination of a teacher's employment which added to the constitutional due process minimums. To the extent they were mandatory they too became a part of the Fourteenth Amendment minimums.

13. On February 8, 2021, counsel for the district advised the best the District could do would be to allow Ms. Holly five or ten minutes to address the board at its then upcoming February 25, 2021, meeting. With no other *post-deprivation* due process protections being offered, Ms. Holly still maintained she was entitled to a full *post-deprivation* due process hearing affording her all the rights provided under the Fourteenth Amendment Due Process clause.

14. The Fourteenth Amendment Due Process clause entitled Holly to a pre-deprivation hearing *before* she was terminated and a full post-deprivation due process hearing. She was offered neither.

15. Because of her long tenure and unblemished employment record; the fact she, on the advice of her doctors, sought only five (5) additional days, a reasonable accommodation, to heal from major surgery before returning to work; and the

circumstances surrounding her termination, Jessica Holly should not have been discharged from her employment with the Defendant School District.

16. Plaintiff Holly's daughter was born on September 24, 2020. During the Caesarian section, the doctor nicked Ms. Holly's bowel. This necessitated calling in an expert to do a complete bowel resection.

17. Ms. Holly went back to her OB/GYN for her scheduled follow up appointment. At the time, she was having bowel problems. The doctor decided at that appointment, Ms. Holly, instead of returning to work on Monday, December 14, should also take the week of December 14 through December 18 off to make sure there was no bowel obstruction. The effect of taking this week off would mean, since the Christmas break began on December 21, 2020, that Ms. Holly would be returning to work at the end of the Christmas Break on January 4, 2021.

18. The paperwork from her treating physician, which Ms. Holly turned in to the District, gave her an expected return to work date as January 4, 2021. Her current treatment was given as: monitor bowel function, constipation, and appetite loss.

19. Billia Knight works in the HR Office and is over benefits and Family and Medical Act Leave ("FMLA") leave for the District. Ms. Holly sent Ms. Knight an email on October 30, 2020, informing Ms. Knight that the additional five days leave would be necessary and explained to her why. She also forwarded her a disability form filled out by her doctor (for her short-term disability insurance) explaining the need for the five additional days and a return to work on January 4, 2021. She then asked Ms. Knight to let her know if anything further was needed.

20. The October 30, 2020, email from Ms. Holly to Ms. Knight reads:

> "Good morning! My doctor has extended my leave until January 4th. Her original date of discharge for me was December 14th. I am still being seen by her and now GI Associates. I have included her latest form for my disability since it has the new discharge date. I think that extension would put me at 4 days past the 60.[1] ***Let me know if there is anything else I need to include***." (emphasis added)

21. A little over five (5) weeks later, Ms. Knight replied by email of December 7, 2020, saying:

> "Hi Ms. Holly, I hope all is well. Please see the attached. 60 day notice letter. I do have the email from you with an updated return to work date for January 4, 2021. This will be five days after your 60 day mark, which is December 11, 2020. ***These days will have to be approved by your principal.*** Please let me know if this date remains the same. Thanks." (emphasis added)

22. Ms. Knight's December 7, 2020 request to contact her principal was made over a month after Ms. Holly had already contacted her principal. On November 4, 2020, Ms. Holly called her principal, Ms. Lakeshia Batty, to talk with her about the five day leave extension. She updated Ms. Batty on the leave and the need for the extra week on account of the bowel injury issue to make sure the problem had been cured and she would return on January 4th.

23. According to Ms. Holly, Ms. Batty responded, "Okay," and asked her whether she had talked with Billia Knight at Central Office to which Holly responded, "yes." She told her she had already submitted the paperwork to Ms. Knight for the leave extension, including the form filled out by her doctor stating the need and reason for the additional five (5) days leave. She told Ms. Batty she would be returning to work on January 4, 2021, at the end of the Christmas break.

[1] The "60 day mark" referring to the twelve (12) weeks unpaid leave allowed under the Family and Medical Leave Act, 29 USC §2601 *et seq.*

24. When she told Ms. Batty she had submitted the needed paperwork to Billia Knight, Batty replied, "then we're good." Ms. Holly says, based on Ms. Batty's statement "then we're good," she assumed everything was, in fact, "good." She had told her principal she needed the extra five (5) days leave; the principal had approved the extension subject to her getting the paperwork to Billia Knight at Central Office; Ms. Holly submitted the paperwork and doctor's statement for her short-term disability coverage to Ms. Knight; Finally, Knight had clearly implied the only thing needed for approval of the extension was the principal's approval.

25. As this series of communications about extending Ms. Holly's leave for the additional five days demonstrates, regardless of what they may have intended, what the District conveyed to Ms. Holly, at least until December 7, 2020, was the additional five days leave would be approved so long as it was agreeable with both Principal Batty and Billia Knight in the H.R. office. After she had obtained the approval of both her Principal and Billia Knight, it was certainly reasonable for Ms. Holly to have assumed the additional five days leave had been approved.

26. On December 7, 2020, Ms. Knight sent Ms. Holly an email telling her that her twelve weeks FMLA leave would expire on December 11, 2020. Ms. Knight went on to say in the email that Holly's request to extend her leave for five (5) additional days "will have to be approved by your principal."

27. That same date Ms. Knight sent Ms. Holly a certified letter in which, among other things, she told Ms. Holly, "[Y]ou will no longer be protected under the FMLA as of December 12, 2020. You will be expected to return to work with a release from your

medical provider. If you are unable to return to work, please contact me immediately to discuss your situation. Please remember all leave, with the exception of FMLA, must be approved by your principal."

28. On December 14, 2020, Dr. Little from Human Resources contacted Jessica Holly. Dr. Little told Holly she had no information about Holly having previously contacted her building principal and immediate supervisor, Mrs. Batty, to get Batty's approval on the five (5) extra sick leave days and a return to work on January 4, after the Christmas break, instead of the original return date, December 14, 2020.

29. Holly explained to Dr. Little she had talked with Mrs. Batty in November and Mrs. Batty had approved Holly taking the extra five (5) days.

30. Dr. Little replied since she had no knowledge of the November contact between Ms. Holly and Mrs. Batty, Ms. Holly needed to contact Mrs. Batty as soon as possible and clear up the matter of Mrs. Batty's agreement to the five (5) extra days leave. As soon as she got off the phone with Dr. Little, Holly called Mrs. Batty, got no answer, and left a voice mail asking her to call Ms. Holly back.

31. Ms. Holly waited ten (10) or fifteen (15) minutes and when she got no call back from Mrs. Batty, she called Dr. Cedric Magee, Associate Superintendent. Dr. Magee was the next person of authority above Mrs. Batty. Ms. Holly asked Dr. Magee whether he had heard anything about the apparent controversy surrounding her request for five extra days sick leave. Ms. Holly explained to Dr. Magee what had happened. Dr. Magee replied he had heard nothing about it, but he would investigate the matter and get back with Ms. Holly. It is unknown whether Dr. Magee "investigated" or otherwise made inquiries into the matter as he said he would. On the morning of Thursday, December 17, not

having heard back from Dr. Magee, Ms. Holly emailed him. She explained to him she was worried sick over her job and asked if he had heard anything about her possible termination. He replied that he had not heard anything. Dr. Magee never reported anything back to Holly.

32. Holly was ready, willing, and able to return to work on January 4, 2021, but, having been wrongly terminated, she was not given that opportunity.

IV. Cause of Action No. 1

Denial of Fourteenth Amendment Pre-Deprivation Procedural Due Process Claim Prosecuted Under 42 U.S.C. §1983

33. The facts and allegations contained in paragraphs 1 through 32 above are incorporated herein just as if set out fully herein in words and figures.

34. Jessica Holly had a written contract to work for the Vicksburg Warren School District for the entire school year, 2020-2021. She was terminated mid-contract. Ms. Holly has been deprived of her federal constitutional right under the Fourteenth Amendment of the United States Constitution of pre-deprivation due process before her contract could have been lawfully terminated.

35. The contract had been signed by the Superintendent and had been approved and ratified by the District's School Board, the final policymaker for the district. Therefore, Jessica Holly had a property interest in her contract of employment with the Vicksburg Warren School District which was property protected by the Due Process clause of the Fourteenth Amendment. Before she, as a public employee with a protected contractual property interest, could be terminated, she must have first been given a pre-deprivation due process hearing. Jessica Holly was denied her pre-deprivation due

process.

36. Pre-Deprivation Procedural Due Process requires notice of the charges against you and the right to answer the charges at a meaningful time, in a meaningful way. Jessica Holly was not provided any of this.

37. The school district, under state law, may terminate certificated employees for "cause." Miss. Code Ann. §37-9-59 specifically provides: "For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school District."

38. In the case of Jessica Holly, an assistant principal who was to be terminated for cause and who opposed her termination, she had, at a minimum, the following Fourteenth Amendment Pre-Deprivation procedural Due Process rights:

> (a) to be advised of the cause or causes for her termination *in sufficient detail to fairly enable her to show any error that may exist*;
>
> (b) to be advised of the names and *the nature of the testimony of witnesses against her*; and,
>
> (c) *at a reasonable time* after such advice she be accorded a *meaningful opportunity* to be heard in her own defense.

39. When published rules and regulations establish a particular statutory procedure for the termination of a teacher's employment, they may *add* to the constitutional minimum. If they do, such regulations must also be followed. Additional procedural rights were provided to Plaintiff Holly in Miss Code Ann. Rules §37-9-111, adopted by reference in the educator disciplinary statute, Miss. Code Ann. §37-9-59. These procedural rights, should have, but were not, satisfied by a termination with no due process and an

abbreviated post-termination process with "parameters" to be fixed.

40. In her December 15, 2020, letter of termination, which Ms. Holly received on Thursday, December 17, 2020, at approximately 2:30pm, the only things which the Superintendent said were:

(A). Ms. Holly's twelve (12) week unpaid FMLA leave expired on Friday, December 11, 2020;

(B). Payroll records showed Ms. Holly had entered the status of leave without pay;

(C). As of December 15, 2020, Ms. Holly had not reported back to work;

(D). The Superintendent was going to recommend to the Board at its Thursday, December 17, 2020,[2] meeting (which started at 5:30pm, three hours after Ms. Holly received the letter of termination) that it "terminate" Jessica Holly's employment with the District effective Tuesday, December 15, 2020;

(E). The decision to terminate "in no way reflects upon your job performance" and she left her employment with the District "in good standing;" and,

(F). In the future, if able to return to work, Ms. Holly was "encouraged" to reapply for employment with the District.

41. On December 17, 2020, Ms. Holly received the Superintendent's termination letter at 2:30pm in the afternoon advising he was going to recommend her termination to the Board. The meeting at which he recommended her termination was three hours later at 5:30pm. She had a right to have been afforded a reasonable amount of time

[2] The Superintendent's letter actually says the Board meeting was going to be held on Thursday, December 19, 2020. That is believed to have been an error on the Superintendent's part. Thursday was December 17, not December 19. There is no meeting notice, meeting Agenda nor any minutes on the District's website for a Board meeting held on Saturday, December 19, 2020.

within which to prepare her defense on both the issue of whether the leave issue was grounds for disciplinary action and, if so, what ought the penalty have been. The short space of three hours clearly did not afford Ms. Holly this right.

42. Ms. Holly had the pre-deprivation Due Process right to be advised of the cause or causes for her termination in sufficient detail to fairly enable her to show any error that may exist. She was not afforded this specificity.

43. Ms. Holly had the pre-deprivation Due Process right to be advised of the names and the nature of the testimony of witnesses against her. She was not afforded this right.

44. Ms. Holly had the pre-deprivation Due Process right to support her position by argument. She was not afforded this right.

45. Ms. Holly had the pre-deprivation Due Process right to support her position by presenting proof. She was not afforded this right.

46. Putting together the Board Policy and the statutes quoted above, it is clear Jessica Holly was entitled to pre-deprivation Due Process before her employment could be lawfully terminated. While the determination of the process due is a federal question, the due process provided by the statutes and board policy are evidence leading to the conclusion Jessica Holly had a property interest in her contract of employment.

47. In this case the Board is liable as a body because: (1) It clearly violated its own Policy, GBK titled Professional Personnel Suspension/Dismissal and the two statutes incorporated therein by reference, the Mississippi Educator's Disciplinary Statute, Miss. Code Ann. §37-9-59 and Miss. Code Ann. §37-9-111 for the Due Process procedures to be followed; (2) the Board members had knowledge of its own policy, GBK; and, (3) the

Board in terminating Jessica Holly without any due process was deliberately indifferent as to the known or obvious consequences of its vote to terminate Jessica Holly's employment contract.

48. A person or entity acts under color of state law if he/she misuses power possessed by virtue of state law and made possible because the wrongdoer is clothed with the authority of state law. In this case, the School Board is the District's final policy maker in general under Mississippi Code Ann. §37-7-301 and Mississippi Code Ann. §37-7-301.1. It is the final policy maker specifically with reference to termination of certificated employees such as teachers and administrators under Mississippi Code Ann. §37-9-59. In this case, the School Board misused its power possessed by virtue of state law while clothed with the authority of state law when it decided to terminate Jessica Holly's employment contract without first having afforded her pre-deprivation Due Process. By virtue of their authority under state law, when the Board members voted to terminate Jessica Holly's contract, they were state actors.

Cause of Action No. 2

Denial of Fourteenth Amendment Post-Deprivation Procedural
Due Process Claim Prosecuted Under 42 U.S.C. §1983

49. The facts and allegations contained in paragraphs 1 through 48 above are incorporated herein just as if set out fully herein in words and figures.

50. Pre-Deprivation and Post-Deprivation Due Process work in Tandem. If the post-deprivation due process offered is strong (viz. – a full due process hearing with the right to cross-examine, call witnesses, introduce documents, etc.), then the need for pre-deprivation due process is mitigated. Conversely, if the pre-deprivation due process

afforded is weak, then the post-deprivation due process must be strong (viz. – a timely and full due process hearing with the right to cross-examine, call witnesses, introduce documents, etc.).

51. Regardless of the amount of post-deprivation due process afforded, it might mitigate but would never fully cure the District's failure to have provided the required minimum pre-deprivation due process. The less post-deprivation due process, the minimum level of pre-deprivation due process required would be heightened. In Ms. Holly's case, there was no due process afforded pre-deprivation. Therefore, to mitigate this total absence of pre-deprivation due process, the School District had a duty to provide Holly post-deprivation a complete due process hearing. Offering her 5 to 10 minutes to make a statement to the Board did not rise to the level required to provide Ms. Holly with the necessary post-deprivation due process. Instead, the District deprived her of her post-deprivation rights by offering a truncated opportunity to address the board for several minutes subject to unstated parameters. Such actions by the board were pretext to cover its desire to deprive Ms. Holly of her rights for no justifiable reason and get away with it.

Cause of Action No. 3

The Deprivation of Jessica Holly's Contract Was Done In Such An Arbitrary and Capricious manner as to Be A Violation of Holly's Substantive Due Process Rights Under the 14th Amendment

52. The facts and allegations contained in paragraphs 1 through 51 above are incorporated herein just as if set out fully herein in words and figures.

53. On or about December 16, 2016, the Board adopted Policy GBK titled Professional Personnel Suspension/Dismissal. Policy GBK sets out the procedures to be

followed when an employee is terminated. It in essence incorporates by reference the Mississippi educator's disciplinary statute, Miss. Code Ann. §37-9-59 and Miss. Code Ann. §37-9-111 for the procedures to be followed. The District did not follow these procedures.

54. Policy GBK, Miss. Code Ann. §37-9-59 and Miss. Code Ann. §37-9-111, taken together provide the procedures to be followed in an employee discharge case at the Vicksburg Warren School District. They provide for notice, hearing, the right to subpoena witnesses, the right to call witnesses, put on other proof, the right to appear before the Board making the decision, and generally the right to argue your case.

55. In making its decision in Jessica Holly's case, the Board, its members, and the Superintendent all acted in reckless disregard of her rights to due process.

56. They are believed to have relied upon the first section of Policy GBK which purports to allow treating an absence case as a "contract abandonment." This is classified as a breach of contract for which the Board may contend no pre-deprivation or post- deprivation hearing is required.

57. In doing so, the Board flouts the fact that the amount of due process afforded to Ms. Holly is determined by federal law, not state law, and state law cannot be used to curtail the process which is due under federal law. This was established over thirty-five (35) years ago in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).

62. In light of Loudermill and its voluminous progeny over the last thirty-five (35) years, it was arbitrary and capricious and reckless to disregard this established body of law and terminate Jessica Holly's contract without affording any pre-deprivation due process.

Defendants have therefore violated plaintiff's due process rights in reference to their termination of plaintiff.

Cause of Action No. 4

Violation of the Americans with Disabilities Act

59. The facts and allegations contained in paragraphs 1 through 58 above are incorporated herein just as if set out fully herein in words and figures.

60. To determine whether a condition is a disability within the meaning of the Americans with Disabilities Act, there is a three-step analysis: (1) You much prove the plaintiff has a physical impairment; (2) you must then prove the life activity constitutes a major life activity under the ADA; and (3) you much prove the impairment substantially limits the major life activity.[3]

61 When her employment contract was terminated and she was fired, Jessica Holly had a physical impairment that substantially limited her ability to work. *See* 45 C.F.R. §84.3(j)(ii) ("Major life activities means...working."). Her ability to work was a major life activity; and, her impairment substantially limited her major life's activity of being able to work. She was, according to her doctor's orders, to remain homebound for one additional week to monitor her bowel function, constipation, and appetite loss as a result of a serious ailment.

62. Just having completed twelve weeks Family Medical Leave Act leave, Jessica Holly had a record of her being unable to come to work. In light of the fact she was fired

[3] Bragdon v. Abbot, 524 U.S. 624, 631, 118 S. Ct. 2196 (1998).

for not coming to work, she was regarded by the school district as having a physical impairment, viz. – being unable to come to work.

63. Under the Americans With Disabilities Act, 42 U.S.C. §12101 *et seq*. an employer such as the School District is required to make a "reasonable accommodation" to allow an employee such as Jessica Holly to return to work. A "reasonable accommodation" is, by its terms, most logically construed to mean that which presently, or in the immediate future, enables the employee to return to work and perform the essential functions of their job.

64. Pursuant to her doctor's orders, Jessica Holly asked for one additional week of leave, a reasonable accommodation. It was "reasonable" because her physician also opined she would be able to return to work on January 4, 2021, when the school district re-opened for classes. Notably, her only restriction being no heavy lifting. It was a reasonable accommodation because it would have allowed Jessica Holly to return to work in the immediate future and perform the essential functions of her job. In fact, because heavy lifting was not a part of her job, she would have in effect been returning to her job with no restrictions.

65. The ADA requires the employer and employee to engage in a "give and take" negotiation to arrive, if possible, at a "reasonable accommodation." Ms. Holly asked for the additional five days off per her doctor's orders. There was no give and take on the side of the school district. Their response was to terminate her immediately after she missed the first of the five days requested, even though she was led to believe her leave had been granted.

66. Plaintiff Holly has exhausted her EEOC remedies. She filed Charge Number

423-2021-00381 on March 3, 2021, against the Vicksburg Warren School District. A copy is attached as Exhibit (A) and incorporated herein by reference. In her charge, in pertinent part, she alleges "I believe that I have been discriminated against in violation of the Americans with Disabilities Act of 1990, as amended. I was discharged from employment even though I provided a projected return date of January 4, 2021. The Benefits Manager became aware of my request as early as October 30. 2021. The Building Principal became aware as early as November 4, 2020, about my request to take approximately an additional 5 days off work to tend to my medical condition."

67. Plaintiff, Holly, received her "Right To Sue" letter by email on April 29, 2022. A copy is attached as Exhibit (B).

Cause of Action Number 5

Common Law Breach of Contract

68. The facts and allegations contained in paragraphs 1 through 68 above are incorporated herein just as if set out fully herein in words and figures.

69. Jessica Holly had a contract with the Vicksburg Warren School District for the entire 2020-2021 school year.

70. The Vicksburg Warren School District violated that contract when, on December 15, 2020, it terminated the contract without affording her pre-deprivation due process and without making a reasonable accommodation in response to her request to extend her unpaid leave by one week.

71. Termination of the contract was not the only violation. Every educator's contract has a provision in it which provides, "This contract shall be subject to all applicable policies, resolutions, rules and regulations of the employer, the Mississippi

Educator Code of Ethics and Standard of Conduct adopted by the state Board of Education and the laws of the State of Mississippi."[4] Thus, to the extent the defendants failed to provide plaintiff with the hearing rights afforded by Miss. Code Ann. §37-9-111, it also violated the contract between the parties. To the extent these rights were mandatory on the part of the district, they also become a part of the rights protected by the Due Process Clause of the Fourteenth Amendment.

Cause of Action Number 6

Breach of the Covenant of
Good Faith and Fair Dealing

72. The facts and allegations contained in paragraphs 1 through 72 above are incorporated herein just as if set out fully herein in words and figures.

73. Every contract in Mississippi includes, as a matter of common law, a covenant of good faith and fair dealing.

74. The covenant of good faith and fair dealing protects the parties' justified expectations that the contract will be performed in a manner consistent with its agreed purpose.

75. The agreed purpose of the contract between Holly and the School District was that the contract would be for the full school year and Holly would not be terminated in the circumstances of this case without the District affording her pre-deprivation due process and without the district granting her a reasonable accommodation of the five additional days leave as requested by her physician.

76. The District violated the covenant of good faith and fair dealing when it terminated Holly's employment on December 15, 2020, without it first having afforded Holly

[4] Miss. Dept. Of Education Regulations, CMSR07-000-003, Chap. 24, Rule 24.1.

pre-deprivation due process and without the district granting her a reasonable accommodation of the five additional days leave as requested by her physician.

77. Breach of the covenant of good faith and fair dealing falls under the purview of the Mississippi Tort Claims Act, Miss. Code Ann. §11-46-1 *et seq*. Notice of Claim was properly and timely served on the Vicksburg Warren School District, a political subdivision of the State within the meaning of Miss. Code Ann. §11-46-1(I). Thereafter, suit was filed timely within the meaning of Miss. Code Ann. §11-46-11(3)(b).

78. The relevant dates and deadlines are: December 15, 2020 (Date Jessica Holly terminated); November 29,2021 (date notice letter personally served on the school district's Superintendent); March 4, 2022 (date the 95 day tolling period ended); and, June 2, 2022, (deadline for filing suit). All timelines have been met and the MTCA ("Mississippi Tort Claims Act") claims are, pursuant to the Court's supplemental jurisdiction, properly before this Court.

V. Damages

79. Plaintiff has suffered a loss of her Fourteenth Amendment Constitutional right to *pre-deprivation* and *post-deprivation* due process hearings. As a direct and proximate result of the violation of her Fourteenth Amendment right to *pre-deprivation* and/or *post-deprivation* due process hearings, Plaintiff's depression worsened, she developed severe anxiety, her fibromyalgia returned after a seven year absence, and her blood pressure increased significantly. She has suffered emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. She has also lost back wages from December 15, 2020, through the end of the 2020-2021 school year.

80. In this case, the School District fired a twenty-year employee with an unblemished work record, with no pre-deprivation due process, who was one day over her FMLA unpaid leave and did it in a manner totally inconsistent with U.S. Supreme Court authority. The District, through the School Board, its final policy maker, acted in an arbitrary and capricious and reckless manner in the way it chose to terminate her employment contract.

81. Punitive damages may be recovered against individual defendants in an action brought under 42 USC §1983 where the defendants' conduct involves reckless or callous indifference to the Plaintiff's federally protected rights. Punitive damages are awarded under §1983 litigation in the jury's discretion to punish defendants for their reckless conduct and to deter defendants and others like them from similar conduct in the future. The individual defendants acted recklessly in totally ignoring Plaintiff's pre-deprivation due process rights and statutory rights which, under Miss. Code Ann. §37-9-111, included the following mandates: (1) The Board must set the hearing not sooner than five (5) days from the date of the hearing request; (2) The person making the recommendation to terminate cannot sit as the hearing officer; (3) After the hearing officer has been appointed, there can be no ex parte contact between the hearing and the parties; (4) The person being terminated may elect to have his/her hearing in executive session or open to the public; (5) The person has the right at the hearing to present matters relevant to the reason(s) given for the termination recommendation; (6) The person has the right to be represented by counsel at their own expense; (7) The person shall have a reasonable opportunity to present witnesses and other evidence "pertinent" to the issues; (8) The person shall have the right to cross-examine witnesses at he hearing; (9) The person shall have the right to

the issuance of subpoenas for witnesses to compel their attendance and giving of evidence; (10) The Board is required to provide a stenographer to record the proceedings in the case of an appeal; and, (12) If the hearing is conducted by a hearing officer, the Board must give the person an opportunity to appear before the Board makes its final decision before it makes its final decision to present a statement either in person or through his/her attorney.

VI. Prayer For Relief

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that this her complaint would be received and filed and that after a trial thereon that she be awarded a judgment including:

1. Money Damages sufficient to compensate her for the loss of her Fourteenth Amendment Due Process right to *pre-deprivation* and post-deprivation hearings and the damages flowing therefrom;

2. Money Damages sufficient to compensate her for the loss of her right to a reasonable accommodation for her disability and the loss of the reasonable accommodation, itself.

3. Money damages sufficient to compensate her for injury to her health as a direct and proximate result of the loss of her Fourteenth Amendment Due Process rights and the loss of her right to a reasonable accommodation under the Americans with Disabilities Act;

4. Money damages sufficient to compensate Jessica Holly for her loss of income from December 15, 2020, through the end of the 2020-2021 school year;

5. Reasonable attorney fees and expert witness fees pursuant to 42 U.S.C.

§1988, as part of the costs;

6. Plaintiff asks for punitive damages for all actions brought against the named defendants in their individual capacities under 42 U.S.C. §1983 with the damages to be apportioned.

7. Plaintiff, Jessica Holly, is not asking that she be reinstated in her former job; she is instead seeking money damages for breach of contract; and,

8. Such further and general relief as would be just in the circumstances.

Demand For Trial By Jury

Pursuant to Fed. R. Civ. P. 38, the Plaintiff demands trial by jury on all issues which may, by law, be tried before a jury.

Respectfully submitted,

/s/ Keith B. French
Keith B. French, MSB No. 104628
Keith B. French Law, PLLC
405 Briarwood Dr.
Suite 108Q
Jackson, MS 39206
Tel: (601) 376-9306
Fax: (832) 243-1927
Email: kfrench@peoplefirstfirm.com

ATTORNEY FOR PLAINTIFF

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Jessica Holly

(b) County of Residence of First Listed Plaintiff Warren
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Keith B. French Law, PLLC, 405 Briarwood Dr., Suite 108Q, Jackson, MS 39206

DEFENDANTS

Vicksburg Warren School District; Bryan Pratt; Alonzo Steven; James Stirgus, Jr.; Kimble Slaton, Nancy Bullard

County of Residence of First Listed Defendant Warren
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Unknown

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☒ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE
5-19-2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

AMSSDC-4842141

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: ☐ FEPA ☒ EEOC

Agency(ies) Charge No(s): 423-2021-00381

and EEOC

State or local Agency, if any

Name *(indicate Mr., Ms., Mrs.)*	Home Phone	Year of Birth
MS. JESSICA R HOLLY	**(601) 415-0967**	

Street Address: **204 ALFRED DRIVE, VICKSBURG,MS 39180** City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No.
VICKSBURG WARREN SCHOOL DISTRICT	**501+**	

Street Address: **1500 MISSION 66, VICKSBURG, MS 39180** City, State and ZIP Code

Name	No. Employees, Members	Phone No.

Street Address: City, State and ZIP Code

DISCRIMINATION BASED ON *(Check appropriate box(es).)*

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☒ OTHER *(Specify)*

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
12-15-2020	**12-15-2020**

☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I began employment with the above-mentioned employer January 2001. I recently worked as an Assistant Principal until I was discharged from employment on December 15, 2020.

Although I submitted a request for a reasonable accommodation with ample time to the employer, nothing was done to facilitate my request.

I believe that I have been discriminated against in violation of The Americans with Disabilities Act of 1990, as amended. I was discharged from employment even though I provided a projected return date of January 04, 2021. The Benefits Manager became aware of my request as early as October 30, 2021. The Building Principal became aware as early as November 4, 2020 about my request to take approximately an additional 5 days off work to tend to my medical condition.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Digitally signed by Jessica Holly on 03-03-2021 03:59 PM EST

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(*month, day, year*)

U.S. Department of Justice
Civil Rights Division

KC:MLB:KLF
DJ 170-41-0

Employment Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530
www.usdoj.gov/crt/emp

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

April 29, 2022

Ms. Jessica R. Holly
c/o Preston "Bo" Rideout, Esquire
Law Office of Preston "Bo" Rideout
203 Walthall Street
Greenwood, MS 38930

Re: Jessica R. Holly v. Vicksburg-Warren School District
EEOC Charge No. 423-2021-00381

Dear Ms. Holly:

It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the Equal Employment Opportunity Commission (EEOC). This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation in this matter was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please feel free to address your inquiry to: Eszean McDuffy, Area Director, EEOC, Dr. A. H. McCoy Federal Building, 100 W. Capitol St., Ste. 338, Jackson, MS 39269.

Sincerely,

Kristen Clarke
Assistant Attorney General
Civil Rights Division

By: Meredith L Burrell

Meredith L. Burrell
Principal Deputy Chief
Employment Litigation Section

cc: Jessica R. Holly
Vicksburg-Warren School Dist. c/o Lennie Little, H.R. Director
Joshua L. Dixon, Esquire
EEOC, Jackson Area Office

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

v. — CASE NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

UNOPPOSED MOTION FOR EXTENSION

COME NOW the defendants and file the following Unopposed Motion for Extension of time in which to file their Answer to the Complaint:

1. The defendants were recently served with process in this case.

2. Counsel for the defendants was only recently retained to defend this lawsuit and has not had adequate time to review the plaintiff's Complaint and the relevant documents or to speak to the relevant witnesses.

3. The defendants have proposed, and the plaintiff, by and through her attorney, has agreed to an extension for the defendants to file their Answer through July 29, 2022.

4. The foregoing Motion is not being filed for improper purposes or to unreasonably delay this matter, and the Motion is unopposed.

WHEREFORE, PREMISES CONSIDERED, the defendants request that this Court enter an Order granting them an extension of time through July 29, 2022, in which to file their Answer to the Complaint.

This the 21st day of July, 2022.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON, AND NANCY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES, MSB 100103
tpeeples@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
265 NORTH LAMAR BOULEVARD, SUITE R
P.O. BOX 1396
OXFORD, MS 38655
(662) 232-8979 TELEPHONE
(662) 232-8940 FACSIMILE

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2022, I electronically filed the above foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

v. — CASE NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

AGREED ORDER GRANTING UNOPPOSED MOTION FOR EXTENSION

CAME BEFORE THIS COURT the Unopposed Motion for Extension filed by the defendants [Doc #2] for additional time in which to file their Answer to the Complaint, and the Court, noting that the Motion is unopposed, hereby GRANTS the Motion.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendants shall have an extension of time through July 29, 2022, in which to file their Answer to the Complaint.

SO ORDERED AND ADJUDGED, this, the 26th day of July 2022.

LaKeysha Greer Isaac
UNITED STATES MAGISTRATE JUDGE

Agreed to:

/s/Keith B. French
Keith B. French
Attorney for Plaintiff

/s/Timothy M. Peeples
Timothy M. Peeples
Attorney for Defendants

Prepared by:
TIMOTHY M. PEEPLES, MSB 100103
tpeeples@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
P.O. BOX 1396
OXFORD, MS 38655

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

ANSWER AND DEFENSES AND COUNTERCLAIM

COME NOW the defendants[1], by and through counsel, and file their Answer and Defenses to the plaintiff's Complaint, as follows:

FIRST DEFENSE

The plaintiff's Complaint fails to state a claim upon which relief may be granted and should be dismissed with prejudice pursuant to F.R.C.P. 12(b)(6).

SECOND DEFENSE

The defendants hereby plead and affirmatively avail themselves of any and all good faith defenses available to it under Rules 12(b)(1) through 12(b)(7) of the Federal Rules of Civil Procedure. The defendants hereby preserve and specifically do not waive any defense which might be or become available to it as discovery proceeds and the facts of the case develop.

THIRD DEFENSE

The individual defendants are not proper parties and should be dismissed from this lawsuit. Additionally, there is no "Nancy" Bullard employed by the Vicksburg Warren School District.

[1] The plaintiff has incorrectly sued "Nancy" Bullard. The correct defendant is Sally Bullard. The defendants deny that Sally Bullard is a proper party and move for her dismissal.

FOURTH DEFENSE

ANSWER

Without waiving their right to be heard on the foregoing Defenses, the defendants respond to the specific allegations of the Complaint, paragraph by paragraph, as follows:

The Parties

1. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 1 and, therefore, deny those allegations.
2. The defendants admit only that they may be served as permitted under the Federal Rules of Civil Procedure. All remaining allegations are denied.
3. The defendants deny that "Nancy" Bullard is a proper defendant. The defendants admit only that they may be served as permitted under the Federal Rules of Civil Procedure. All remaining allegations are denied.

Jurisdiction and Venue

4. The allegations contained in Paragraph 4 call for legal conclusions to which no response is required.

The Facts

5. The defendants admit only that Jessica Holly worked for the Vicksburg Warren School District and that she was terminated in December 2020. All remaining allegations are denied.
6. The defendants admit only that the plaintiff was terminated in December 2020. The documents referenced in Paragraph 6 speak for themselves. All remaining allegations are denied.

7. The defendants are without sufficient information to admit or deny when the plaintiff received her termination letter. The plaintiff was not entitled to a pre-deprivation due process hearing. While the plaintiff was not entitled to a pre-deprivation hearing, she nevertheless received sufficient notice to constitute same. The defendants admit that school district's Board upheld the decision to terminate the plaintiff on December 17, 2020. All remaining allegations are denied.
8. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 and, therefore, deny those allegations.
9. The document referenced in Paragraph 9 of the Complaint speaks for itself. All remaining allegations are denied.
10. The defendants admit only that there were discussions with the plaintiff's attorney about the plaintiff's right to a due process hearing and that the plaintiff was ultimately given the right to a due process hearing. All remaining allegations are denied.
11. The allegations contained in Paragraph 11 seek a legal opinion to which no response is required. All remaining allegations are denied.
12. The allegations contained in Paragraph 12 call for legal conclusions to which no response is required. All remaining allegations are denied.
13. Denied.
14. The allegations contained in Paragraph 14 call for legal conclusions to which no response is required. All remaining allegations are denied.
15. Denied.
16. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 16 and, therefore, deny those allegations.

17. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 and, therefore, deny those allegations.
18. The document referenced in Paragraph 18 speaks for itself. All remaining allegations are denied.
19. The defendants admit only that the plaintiff contacted Billia Knight in October 2020. All remaining allegations are denied.
20. The document referenced in Paragraph 20 speaks for itself. All remaining allegations are denied.
21. The document referenced in Paragraph 21 speaks for itself. All remaining allegations are denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. The document referenced in Paragraph 26 speaks for itself. All remaining allegations are denied.
27. The document referenced in Paragraph 27 speaks for itself. All remaining allegations are denied.
28. The defendants admit only that the plaintiff was told several times that she needed to address leave with the school principal, Ms. Batty. All remaining allegations are denied.
29. Denied.
30. The defendants admit only that the plaintiff was told several times that she needed to address leave with the school principal, Ms. Batty. All remaining allegations are denied.

31. The defendants admit only that Dr. Cedric Magee spoke to the plaintiff about her return to work. All remaining allegations are denied.

32. Denied.

Cause of Action No. 1

Denial of Fourteenth Amendment Pre-Deprivation Procedural Due Process Claim Prosecuted Under 42 U.S.C. §1983

33. The defendants incorporate all prior responses as if set forth again herein in full.

34. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

35. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

36. The first sentence of Paragraph 36 calls for a legal conclusion to which no response is required. The allegations contained in the second sentence of Paragraph 36 are denied.

37. The allegations contained in Paragraph 37 call for a legal conclusion to which no response is required. All remaining allegations are denied.

38. Denied.

39. Denied.

40. The document referenced in Paragraph 40 speaks for itself. All remaining allegations are denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

Cause of Action No. 2

Denial of Fourteenth Amendment Post-Deprivation Procedural Due Process Claim Prosecuted Under 42 U.S.C. §1983

49. The defendants incorporate all prior responses as if set forth again herein in full.

50. The allegations contained in Paragraph 50 call for a legal conclusion to which no response is required. All remaining allegations are denied.

51. Denied.

Cause of Action No. 3

The Deprivation of Jessica Holly's Contract was Done in Such An Arbitrary and Capricious Manner as to be a Violation of Holly's Substantive Due Process Rights Under the 14th Amendment

52. The defendants incorporate all prior responses as if set forth again herein in full.

53. The document referenced in Paragraph 53 speaks for itself. All remaining allegations are denied.

54. The allegations contained in Paragraph 54 call for a legal conclusion to which no response is required. All remaining allegations are denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

Cause of Action No. 4

Violation of the Americans with Disabilities Act

59. The defendants incorporate all prior responses as if set forth again herein in full.

60. The allegations contained in Paragraph 60 call for a legal conclusion to which no response is required. All remaining allegations are denied.

61. Denied.

62. Denied.

63. The allegations contained in Paragraph 63 call for a legal conclusion to which no response is required. All remaining allegations are denied.

64. Denied.

65. Denied.

66. Denied.

67. Admitted upon information and belief.

Cause of Action No. 5

Common Law Breach of Contract

68. The defendants incorporate all prior responses as if set forth again herein in full.

69. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

70. Denied.

71. Denied.

Cause of Action No. 6

Breach of the Covenant of Good Faith and Fair Dealing

72. The defendants incorporate all prior responses as if set forth again herein in full.

73. The allegations contained in Paragraph 73 call for a legal conclusion to which no response is required. All remaining allegations are denied.

74. The allegations contained in Paragraph 74 call for a legal conclusion to which no response is required. All remaining allegations are denied.

75. Denied.

76. Denied.

77. The allegations contained in Paragraph 77 call for a legal conclusion to which no response is required. All remaining allegations are denied.

78. Denied.

Damages

79. Denied.

80. Denied.

81. Denied.

Prayer for Relief

In response to the unnumbered paragraph of the Complaint under the heading of "PRAYER FOR RELIEF" and beginning with the phrase "WHEREFORE, PREMISES CONSIERED," the defendants deny that the plaintiff is entitled to any relief against them, including sub-parts 1-8.

Demand for Trial by Jury

In response to the unnumbered paragraph of the Complaint under the heading of "DEMAND FOR TRIAL BY JURY," the defendants admit only that the plaintiff had demanded a jury trial. The plaintiff is not entitled to a jury trial, and all remaining allegations are denied.

And now, having responded to the allegations contained in the Compliant, paragraph by paragraph, and having denied all liability, the defendants assert the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the employment-at-will doctrine.

SECOND AFFIRMATIVE DEFENSE

The defendants did not discriminate or retaliate against the plaintiff due to her medical conditions or her application for or her use of FMLA leave. The defendants had legitimate, non-discriminatory, non-retaliatory reasons all of their employment decisions regarding the plaintiff.

THIRD AFFIRMATIVE DEFENSE

The plaintiff was not disciplined or terminated for taking FMLA leave. She violated the defendant's policies and procedures and/or abandoned her job and was not engaged in any protected conduct at the time the defendants made their employment decisions regarding her.

FOURTH AFFIRMATIVE DEFENSE

The defendants acted in good faith and had an objectively reasonable basis for believing their conduct did not violate the FMLA. The plaintiff is not entitled to liquidated damages pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii) or for damages in any amount or reinstatement, employment, or promotion.

FIFTH AFFIMATIVE DEFENSE

Notwithstanding the defendants' denial that the plaintiff's medical conditions and/or her use of FMLA leave played any role in the defendants' employment decisions regarding her, even if such conditions and/or FMLA use were found to have been a factor in the defendants' employment decisions, the defendants would have taken the same actions absent her conditions and/or FMLA use.

SIXTH AFFIRMATIVE DEFENSE

Any claim of discrimination by the plaintiff that was not made the subject of a timely Charge of Discrimination with the EEOC against the defendants is barred for a failure to exhaust administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiff failed to mitigate her alleged damages. Alternatively, any interim earnings received by the plaintiff (including, but not limited to, unemployment compensation and benefits) are a setoff to any attempt to secure an award of backpay or any other form of damages.

EIGHTH AFFIRMATIVE DEFENSE

The defendants affirmatively invoke all applicable damages caps and limitations.

NINTH AFFIRMATIVE DEFENSE

The defendants plead and affirmatively avail themselves of any and all good faith defenses available to them under Federal Rule of Civil Procedure 8(c) including, but not limited to, contributory/comparative fault, payment, accord and satisfaction, statute of limitations, waiver, estoppel, and/or laches.

TENTH AFFIRMATIVE DEFENSE

The plaintiff failed to exhaust all administrative remedies. The plaintiff failed to avail herself of the opportunity to present her case to the school Board.

ELEVENTH AFFIRMATIVE DEFENSE

The defendants assert and invoke all substantive and procedural defenses available to them for all federal and state torts. These defenses include, but are not limited to, the rights, privileges, and immunities set forth in Section 11-46-1 *et seq.* of the Mississippi Code.

TWELFTH AFFIRMATIVE DEFENSE

All injuries and damages for which the plaintiff seeks recovery were the result of her own conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

The defendants assert their right to rely upon after-acquired evidence of misconduct to mitigate the plaintiff's damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

Some or all of the plaintiff's claims are barred by the exclusivity provisions of the Mississippi Workers' Compensation Act.

FIFTEENTH AFFIRMATIVE DEFENSE

The plaintiff is not a "qualified individual" under the Americans with Disabilities Act.

SIXTEENTH AFFIRMATIVE DEFENSE

The defendants invoke all rights, privileges, immunities, and defenses available to them under State and federal law, including, but not limited to, the Family and Medical Leave Act and the Americans with Disabilities Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff is barred from recovering punitive damages because the defendants engaged in no acts that rise to the level required to sustain an award of such damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

Any award of punitive damages would violate the substantive and procedural due process safeguards guaranteed to the defendants by the United States and Mississippi Constitutions. Any such award of damages is, therefore, barred.

NINTEENTH AFFIRMATIVE DEFENSE

With respect to the claim for punitive damages, the defendants would affirmatively show that (a) since punitive damages are penal in nature, the defendants are entitled to the same procedural safeguards afforded to those charged with a crime, and an assessment of punitive damages herein would be in violation of the Sixth Amendment of the United States Constitution; (b) any claim for punitive damages violates the substantive and procedural due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and provisions of the Mississippi Constitution; (c) any award of punitive damages in this case would be in violation of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and the Mississippi Constitution since the standards for imposing liability and for assessing the amount for punitive damages are unconstitutionally vague; (d) the application of such an unconstitutionally vague standard is arbitrary, capricious and not rationally related to any legitimate governmental interest; (e) any award of punitive damages in this case would be in violation of the Eight and Fourteenth Amendments of the United States Constitution and Article 3 and various sections of the Mississippi Constitution; (f) the defendants invoke the limitations regarding the enforceability and constitutionality of punitive damages awards as set forth in *BMW*

of America v. Gore, 116 U.S. 1589 (1996) and *State Farm Mutual Auto. Insur. Co. v. Campbell*, 538 U.S. 408 (2003); (g) the Complaint fails to state a claim against the defendants upon which the plaintiff may be awarded punitive or exemplary damages; and (h) the defendants invoke Mississippi's statutory law pertaining to punitive damages, including Miss. Code Ann. § 11-1-65.

TWENTIENTH AFFIRMATIVE DEFENSE

The defendants reserve the right to amend their Answer and Defenses to assert any additional defenses which may become available or apparent as this action develops.

WHEREFORE, PREMISES CONSIDERED, the defendants respectfully request that the Court dismiss the plaintiff's Complaint with prejudice and assess all costs to the plaintiff.

COUNTERCLAIM

After having answered the Complaint, the Vicksburg Warren School District ("VWSD"), by and through counsel, files the following Counterclaim against the plaintiff and John Does 1-10 and would show the following:

PARTIES

1. The Counter-plaintiff, VWSD, is a public school district and operates schools in Warren County, Mississippi.

2. The Counter-defendant, Jessica Holly, is an adult resident citizen of Vicksburg, Mississippi.

JURISDICTION AND VENUE

3. This Court has supplemental jurisdiction under 28 U.S.C. §1367 to hear the Counter-plaintiff's state law claims against the Counter-defendant as those claims arise out of the same set of facts that give rise to the Counter-defendant's federal law claims.

4. Venue is proper in this Court as the events and circumstances giving rise to the Counter-plaintiff's claims occurred in Warren County, Mississippi.

FACTS

5. Counter-defendant worked as a teacher for VWSD during the 2020-2021 school year.

6. VWSD paid the Counter-defendant $31,249.05 in salary during the Fall 2020 semester.

7. Counter-defendant was absent for the majority of the semester, however, missing approximately 74 out of the 97 work days during which she was employed in the Fall 2020 semester.

8. Counter-defendant only earned $21,101.19 in salary.

9. VWSD overpaid the Counter-defendant in the amount of $10,147.86 and is entitled to recover that overpayment.

10. Counter-defendant did not earn the overpayment and is not entitled to keep the overpayment.

DAMAGES

11. The Counter-plaintiff seeks recovery of the $10,147.86 in overpayments made to the Counter-defendant.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Vicksburg Warren School District respectfully requests that the Court award the following relief:

a. Money damages in the amount of $10,147.86,

b. Costs, expenses, and attorney's fees incurred in collecting the overpayment, and

c. Such further and general relief as may be warranted in the circumstances.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND SALLY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

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FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on July 28, 2022 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

ANSWER AND DEFENSES AND COUNTERCLAIM

COME NOW the defendants[1], by and through counsel, and file their Answer and Defenses to the plaintiff's Complaint, as follows:

FIRST DEFENSE

The plaintiff's Complaint fails to state a claim upon which relief may be granted and should be dismissed with prejudice pursuant to F.R.C.P. 12(b)(6).

SECOND DEFENSE

The defendants hereby plead and affirmatively avail themselves of any and all good faith defenses available to it under Rules 12(b)(1) through 12(b)(7) of the Federal Rules of Civil Procedure. The defendants hereby preserve and specifically do not waive any defense which might be or become available to it as discovery proceeds and the facts of the case develop.

THIRD DEFENSE

The individual defendants are not proper parties and should be dismissed from this lawsuit. Additionally, there is no "Nancy" Bullard employed by the Vicksburg Warren School District.

[1] The plaintiff has incorrectly sued "Nancy" Bullard. The correct defendant is Sally Bullard. The defendants deny that Sally Bullard is a proper party and move for her dismissal.

FOURTH DEFENSE

ANSWER

Without waiving their right to be heard on the foregoing Defenses, the defendants respond to the specific allegations of the Complaint, paragraph by paragraph, as follows:

The Parties

1. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 1 and, therefore, deny those allegations.
2. The defendants admit only that they may be served as permitted under the Federal Rules of Civil Procedure. All remaining allegations are denied.
3. The defendants deny that "Nancy" Bullard is a proper defendant. The defendants admit only that they may be served as permitted under the Federal Rules of Civil Procedure. All remaining allegations are denied.

Jurisdiction and Venue

4. The allegations contained in Paragraph 4 call for legal conclusions to which no response is required.

The Facts

5. The defendants admit only that Jessica Holly worked for the Vicksburg Warren School District and that she was terminated in December 2020. All remaining allegations are denied.
6. The defendants admit only that the plaintiff was terminated in December 2020. The documents referenced in Paragraph 6 speak for themselves. All remaining allegations are denied.

7. The defendants are without sufficient information to admit or deny when the plaintiff received her termination letter. The plaintiff was not entitled to a pre-deprivation due process hearing. While the plaintiff was not entitled to a pre-deprivation hearing, she nevertheless received sufficient notice to constitute same. The defendants admit that school district's Board upheld the decision to terminate the plaintiff on December 17, 2020. All remaining allegations are denied.
8. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 and, therefore, deny those allegations.
9. The document referenced in Paragraph 9 of the Complaint speaks for itself. All remaining allegations are denied.
10. The defendants admit only that there were discussions with the plaintiff's attorney about the plaintiff's right to a due process hearing and that the plaintiff was ultimately given the right to a due process hearing. All remaining allegations are denied.
11. The allegations contained in Paragraph 11 seek a legal opinion to which no response is required. All remaining allegations are denied.
12. The allegations contained in Paragraph 12 call for legal conclusions to which no response is required. All remaining allegations are denied.
13. Denied.
14. The allegations contained in Paragraph 14 call for legal conclusions to which no response is required. All remaining allegations are denied.
15. Denied.
16. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 16 and, therefore, deny those allegations.

17. The defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 and, therefore, deny those allegations.
18. The document referenced in Paragraph 18 speaks for itself. All remaining allegations are denied.
19. The defendants admit only that the plaintiff contacted Billia Knight in October 2020. All remaining allegations are denied.
20. The document referenced in Paragraph 20 speaks for itself. All remaining allegations are denied.
21. The document referenced in Paragraph 21 speaks for itself. All remaining allegations are denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. The document referenced in Paragraph 26 speaks for itself. All remaining allegations are denied.
27. The document referenced in Paragraph 27 speaks for itself. All remaining allegations are denied.
28. The defendants admit only that the plaintiff was told several times that she needed to address leave with the school principal, Ms. Batty. All remaining allegations are denied.
29. Denied.
30. The defendants admit only that the plaintiff was told several times that she needed to address leave with the school principal, Ms. Batty. All remaining allegations are denied.

31. The defendants admit only that Dr. Cedric Magee spoke to the plaintiff about her return to work. All remaining allegations are denied.

32. Denied.

Cause of Action No. 1

Denial of Fourteenth Amendment Pre-Deprivation Procedural Due Process Claim Prosecuted Under 42 U.S.C. §1983

33. The defendants incorporate all prior responses as if set forth again herein in full.

34. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

35. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

36. The first sentence of Paragraph 36 calls for a legal conclusion to which no response is required. The allegations contained in the second sentence of Paragraph 36 are denied.

37. The allegations contained in Paragraph 37 call for a legal conclusion to which no response is required. All remaining allegations are denied.

38. Denied.

39. Denied.

40. The document referenced in Paragraph 40 speaks for itself. All remaining allegations are denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

Cause of Action No. 2

Denial of Fourteenth Amendment Post-Deprivation Procedural Due Process Claim Prosecuted Under 42 U.S.C. §1983

49. The defendants incorporate all prior responses as if set forth again herein in full.

50. The allegations contained in Paragraph 50 call for a legal conclusion to which no response is required. All remaining allegations are denied.

51. Denied.

Cause of Action No. 3

The Deprivation of Jessica Holly's Contract was Done in Such An Arbitrary and Capricious Manner as to be a Violation of Holly's Substantive Due Process Rights Under the 14th Amendment

52. The defendants incorporate all prior responses as if set forth again herein in full.

53. The document referenced in Paragraph 53 speaks for itself. All remaining allegations are denied.

54. The allegations contained in Paragraph 54 call for a legal conclusion to which no response is required. All remaining allegations are denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

Cause of Action No. 4

Violation of the Americans with Disabilities Act

59. The defendants incorporate all prior responses as if set forth again herein in full.

60. The allegations contained in Paragraph 60 call for a legal conclusion to which no response is required. All remaining allegations are denied.

61. Denied.

62. Denied.

63. The allegations contained in Paragraph 63 call for a legal conclusion to which no response is required. All remaining allegations are denied.

64. Denied.

65. Denied.

66. Denied.

67. Admitted upon information and belief.

Cause of Action No. 5

Common Law Breach of Contract

68. The defendants incorporate all prior responses as if set forth again herein in full.

69. The defendants admit only that the plaintiff had an agreement with the Vicksburg Warren School District to work for the 2020-2021 school year. All remaining allegations are denied.

70. Denied.

71. Denied.

Cause of Action No. 6

Breach of the Covenant of Good Faith and Fair Dealing

72. The defendants incorporate all prior responses as if set forth again herein in full.

73. The allegations contained in Paragraph 73 call for a legal conclusion to which no response is required. All remaining allegations are denied.

74. The allegations contained in Paragraph 74 call for a legal conclusion to which no response is required. All remaining allegations are denied.

75. Denied.

76. Denied.

77. The allegations contained in Paragraph 77 call for a legal conclusion to which no response is required. All remaining allegations are denied.

78. Denied.

Damages

79. Denied.

80. Denied.

81. Denied.

Prayer for Relief

In response to the unnumbered paragraph of the Complaint under the heading of "PRAYER FOR RELIEF" and beginning with the phrase "WHEREFORE, PREMISES CONSIERED," the defendants deny that the plaintiff is entitled to any relief against them, including sub-parts 1-8.

Demand for Trial by Jury

In response to the unnumbered paragraph of the Complaint under the heading of "DEMAND FOR TRIAL BY JURY," the defendants admit only that the plaintiff had demanded a jury trial. The plaintiff is not entitled to a jury trial, and all remaining allegations are denied.

And now, having responded to the allegations contained in the Compliant, paragraph by paragraph, and having denied all liability, the defendants assert the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the employment-at-will doctrine.

SECOND AFFIRMATIVE DEFENSE

The defendants did not discriminate or retaliate against the plaintiff due to her medical conditions or her application for or her use of FMLA leave. The defendants had legitimate, non-discriminatory, non-retaliatory reasons all of their employment decisions regarding the plaintiff.

THIRD AFFIRMATIVE DEFENSE

The plaintiff was not disciplined or terminated for taking FMLA leave. She violated the defendant's policies and procedures and/or abandoned her job and was not engaged in any protected conduct at the time the defendants made their employment decisions regarding her.

FOURTH AFFIRMATIVE DEFENSE

The defendants acted in good faith and had an objectively reasonable basis for believing their conduct did not violate the FMLA. The plaintiff is not entitled to liquidated damages pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii) or for damages in any amount or reinstatement, employment, or promotion.

FIFTH AFFIMATIVE DEFENSE

Notwithstanding the defendants' denial that the plaintiff's medical conditions and/or her use of FMLA leave played any role in the defendants' employment decisions regarding her, even if such conditions and/or FMLA use were found to have been a factor in the defendants' employment decisions, the defendants would have taken the same actions absent her conditions and/or FMLA use.

SIXTH AFFIRMATIVE DEFENSE

Any claim of discrimination by the plaintiff that was not made the subject of a timely Charge of Discrimination with the EEOC against the defendants is barred for a failure to exhaust administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiff failed to mitigate her alleged damages. Alternatively, any interim earnings received by the plaintiff (including, but not limited to, unemployment compensation and benefits) are a setoff to any attempt to secure an award of backpay or any other form of damages.

EIGHTH AFFIRMATIVE DEFENSE

The defendants affirmatively invoke all applicable damages caps and limitations.

NINTH AFFIRMATIVE DEFENSE

The defendants plead and affirmatively avail themselves of any and all good faith defenses available to them under Federal Rule of Civil Procedure 8(c) including, but not limited to, contributory/comparative fault, payment, accord and satisfaction, statute of limitations, waiver, estoppel, and/or laches.

TENTH AFFIRMATIVE DEFENSE

The plaintiff failed to exhaust all administrative remedies. The plaintiff failed to avail herself of the opportunity to present her case to the school Board.

ELEVENTH AFFIRMATIVE DEFENSE

The defendants assert and invoke all substantive and procedural defenses available to them for all federal and state torts. These defenses include, but are not limited to, the rights, privileges, and immunities set forth in Section 11-46-1 *et seq.* of the Mississippi Code.

TWELFTH AFFIRMATIVE DEFENSE

All injuries and damages for which the plaintiff seeks recovery were the result of her own conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

The defendants assert their right to rely upon after-acquired evidence of misconduct to mitigate the plaintiff's damages, if any.

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Some or all of the plaintiff's claims are barred by the exclusivity provisions of the Mississippi Workers' Compensation Act.

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The plaintiff is not a "qualified individual" under the Americans with Disabilities Act.

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The defendants invoke all rights, privileges, immunities, and defenses available to them under State and federal law, including, but not limited to, the Family and Medical Leave Act and the Americans with Disabilities Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff is barred from recovering punitive damages because the defendants engaged in no acts that rise to the level required to sustain an award of such damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

Any award of punitive damages would violate the substantive and procedural due process safeguards guaranteed to the defendants by the United States and Mississippi Constitutions. Any such award of damages is, therefore, barred.

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With respect to the claim for punitive damages, the defendants would affirmatively show that (a) since punitive damages are penal in nature, the defendants are entitled to the same procedural safeguards afforded to those charged with a crime, and an assessment of punitive damages herein would be in violation of the Sixth Amendment of the United States Constitution; (b) any claim for punitive damages violates the substantive and procedural due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and provisions of the Mississippi Constitution; (c) any award of punitive damages in this case would be in violation of the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and the Mississippi Constitution since the standards for imposing liability and for assessing the amount for punitive damages are unconstitutionally vague; (d) the application of such an unconstitutionally vague standard is arbitrary, capricious and not rationally related to any legitimate governmental interest; (e) any award of punitive damages in this case would be in violation of the Eight and Fourteenth Amendments of the United States Constitution and Article 3 and various sections of the Mississippi Constitution; (f) the defendants invoke the limitations regarding the enforceability and constitutionality of punitive damages awards as set forth in *BMW*

of America v. Gore, 116 U.S. 1589 (1996) and *State Farm Mutual Auto. Insur. Co. v. Campbell*, 538 U.S. 408 (2003); (g) the Complaint fails to state a claim against the defendants upon which the plaintiff may be awarded punitive or exemplary damages; and (h) the defendants invoke Mississippi's statutory law pertaining to punitive damages, including Miss. Code Ann. § 11-1-65.

TWENTIENTH AFFIRMATIVE DEFENSE

The defendants reserve the right to amend their Answer and Defenses to assert any additional defenses which may become available or apparent as this action develops.

WHEREFORE, PREMISES CONSIDERED, the defendants respectfully request that the Court dismiss the plaintiff's Complaint with prejudice and assess all costs to the plaintiff.

COUNTERCLAIM

After having answered the Complaint, the Vicksburg Warren School District ("VWSD"), by and through counsel, files the following Counterclaim against the plaintiff and John Does 1-10 and would show the following:

PARTIES

1. The Counter-plaintiff, VWSD, is a public school district and operates schools in Warren County, Mississippi.

2. The Counter-defendant, Jessica Holly, is an adult resident citizen of Vicksburg, Mississippi.

JURISDICTION AND VENUE

3. This Court has supplemental jurisdiction under 28 U.S.C. §1367 to hear the Counter-plaintiff's state law claims against the Counter-defendant as those claims arise out of the same set of facts that give rise to the Counter-defendant's federal law claims.

4. Venue is proper in this Court as the events and circumstances giving rise to the Counter-plaintiff's claims occurred in Warren County, Mississippi.

FACTS

5. Counter-defendant worked as a teacher for VWSD during the 2020-2021 school year.

6. VWSD paid the Counter-defendant $31,249.05 in salary during the Fall 2020 semester.

7. Counter-defendant was absent for the majority of the semester, however, missing approximately 74 out of the 97 work days during which she was employed in the Fall 2020 semester.

8. Counter-defendant only earned $21,101.19 in salary.

9. VWSD overpaid the Counter-defendant in the amount of $10,147.86 and is entitled to recover that overpayment.

10. Counter-defendant did not earn the overpayment and is not entitled to keep the overpayment.

DAMAGES

11. The Counter-plaintiff seeks recovery of the $10,147.86 in overpayments made to the Counter-defendant.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Vicksburg Warren School District respectfully requests that the Court award the following relief:

a. Money damages in the amount of $10,147.86,

b. Costs, expenses, and attorney's fees incurred in collecting the overpayment, and

c. Such further and general relief as may be warranted in the circumstances.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND SALLY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

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TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on July 28, 2022 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
Aug 15 2022
ARTHUR JOHNSTON, CLERK
By: _____ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

v. — CIVIL ACTION NO. 3:22CV265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT, ET AL — DEFENDANTS

RULE 16(a) INITIAL ORDER

The above captioned cause is set for a **TELEPHONIC CASE MANAGEMENT CONFERENCE (TCMC)** on September 29, 2022 at 2:30 pm before:

United States Magistrate Judge LaKeysha Greer Isaac
501 E. Court Street, Suite 6.150
Jackson, MS 39201
isaac_chambers@mssd.uscourts.gov
Dial-in Number to use for Conference: **(888) 684-8852 PASSCODE: 3566012**

Unless otherwise instructed, the above dial-in number will be used for the Telephonic Case Management Conference.

No later than twenty-one (21) days prior to the TCMC, counsel shall confer regarding all matters set forth in L.U.Civ. R. 26(f).

No later than fourteen (14) days after the attorney conference and seven (7) days prior to the TCMC, **counsel shall submit a proposed case management order to the judge only.** This submission shall **not** be filed with the Clerk of Court. By the same deadline, **counsel shall also submit a confidential memorandum (3 page maximum) setting forth a brief explanation of the case, and a candid appraisal of the respective positions, including possible settlement figures to:**

isaac_chambers@mssd.uscourts.gov

(PRO SE persons must MAIL their memo instead of using the e-mail address.) Counsel will also furnish in their memorandum a good-faith estimate of the expense of carrying the litigation through trial and the appellate process, if not settled, and will have discussed these costs with their respective clients. These memoranda are **not** to be exchanged and will be viewed only by the Court. Further, these memoranda shall **not** be filed with the Clerk of Court. Do **not** mail a separate copy.

THE FAILURE OF ANY PARTY TO TIMELY SUBMIT THE PROPOSED CASE MANAGEMENT ORDER AND CONFIDENTIAL MEMORANDA MAY REQUIRE ATTENDANCE IN PERSON BY ALL DEFAULTING COUNSEL AT THE CASE MANAGEMENT CONFERENCE. ALL ATTORNEYS OF RECORD FOR THE DEFAULTING PARTY SHALL BE REQUIRED TO ATTEND AND THE CONFERENCE SHALL NOT BE SUBJECT TO RESCHEDULING. SANCTIONS WILL BE IMPOSED AT THE CONFERENCE.

At the telephonic case management conference, the Court and the parties shall:

1. Identify the principal factual and legal issues in dispute;
2. Identify the alternative dispute resolution procedure which counsel intend to use, or report specifically why no such procedure would assist in the resolution of the case;
3. Indicate whether all parties consent to jurisdiction by a magistrate judge;
4. Review the parties' compliance with their disclosure obligations and consider whether to order additional disclosures;
5. Determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation, and provide for the staged resolution, or bifurcation of issues for trial consistent with 42(b) Fed.R.Civ.P.;
6. Determine the plan for at least the first stage of discovery; impose limitations on each discovery tool, time periods and other appropriate matters;
7. Determine the date for the Local Rule 26(g) settlement conference or mediation;
8. Discuss scheduling and set appropriate scheduling deadlines including dates for a settlement conference, completion of discovery, motions, the final pretrial conference and trial. The parties should be prepared to discuss prior conflicts with the trial date.
9. Verify that counsel are registered for electronic document filing and are familiar with the Administrative Procedures for Electronic Filing.

A Case Management Order shall be entered by the Court after the conference. A Uniform Case Management Order form and case management time lines have been developed and are available on the Court 's website at www.mssd.uscourts.gov and as Form No. 1 in the revised Uniform Local Rules, effective December 1, 2015. Counsel shall use that format in discussions and preparation. The Uniform Local Rules are also available on the Court's website.

/s/ Lakeysha Greer Isaac
LAKEYSHA GREER ISAAC
UNITED STATES MAGISTRATE JUDGE

Dated: August 15, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY,	§	**PLAINTIFF**
	§	
	§	
vs.	§	
	§	**Civil Action No. 3:22-CV-265-CWR-LGI**
VICKSBURG WARREN SCHOOL	§	
DISTRICT; BRYAN PRATT; ALONZO	§	
STEVENS; JAMES STIRGUS, JR.;	§	
KIMBLE SLATON; AND NANCY	§	
BULLARD	§	**DEFENDANTS**

PLAINTIFF'S GENERAL DENIAL AND DEFENSES TO COUNTERCLAIM

TO THE HONORABLE JUDGE REEVES:

JESSICA HOLLY ("Plaintiff," or "Ms. Holly"), files this, her General Denial and Defenses to the Counterclaim of Defendant Vicksburg Warren School District ("Defendant"), and would respectfully show the Court the following:

I. GENERAL DENIAL

Plaintiff exercises her statutory right to require Defendant prove all material allegations contained in Defendant's Counterclaim and for this purpose, Defendant generally denies them all. *See* Tex. R. Civ. P. 92.

II. AFFIRMATIVE DEFENSES

As further, separate and affirmative defenses, without assuming the burden of proof of any such defense that rests with Defendant, Plaintiff states as follows:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

Defendant fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Breach of Contract)

Defendant's claim is barred due to Defendant's prior material breach of contract.

THIRD AFFIRMATIVE DEFENSE
(Waiver)

Defendant's claim is barred, in whole or in part, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE
(Setoff)

To the extent that the Court finds Plaintiff owes Defendant, Plaintiff's liability to Defendant must be setoff in whole or in part by the amounts that Defendant owes Plaintiff.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

Defendant is estopped from enforcing any of the alleged rights, claims and obligations it seeks to enforce against Plaintiff.

SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Defendant's claim is barred by the equitable doctrine of unclean hands.

Plaintiff expressly reserves the right to supplement or amend this reply to Defendant's Counterclaim and add additional defenses, including affirmative defenses, which may be discovered or become relevant in the future.

III. CONCLUSION AND PRAYER

Plaintiff Jessica Holly respectfully requests the Court to dismiss with prejudice Defendant's Counterclaim in its entirety, rule that Defendant takes nothing, and that Plaintiff be awarded her attorneys' fees and costs. In addition, Plaintiff Jessica Holly asks the Court to grant her such other and further relief, whether at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

KEITH B. FRENCH LAW, PLLC

By: */s/ Keith B. French*
Keith B. French
State Bar No. 104628
kfrenche@peoplefirstfirm.com

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601-376-9306 Telephone
832-243-6153 Facsimile

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

On August 18, 2022, I electronically submitted the foregoing document with the Clerk of Court for the United States District Court, Sothern District of Mississippi, using the electronic case filing system of the Court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) as follows:

Timothy M. Peeples
Daniel Coker Horton & Bell, P.A.
265 North Lamar Boulevard, Suite R
Oxford, MS 38655-1396

ATTORNEY FOR DEFENDANTS

/s/ *Keith B. French*
Keith B. French

Last Updated: January 2021

FORM 1 (ND/SD MISS. JAN. 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
Sep 29 2022
ARTHUR JOHNSTON, CLERK
By: _____, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

Jessica Holly

PLAINTIFF

v.

CIVIL ACTION NO. 3:22-cv-00265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON;AND NANCY BULLARD

DEFENDANTS

CASE MANAGEMENT ORDER

This Order, including all deadlines, has been established with the participation of all parties and can be modified only by order of the Court on a showing of good cause supported with affidavits, other evidentiary materials, or reference to portions of the record.

IT IS HEREBY ORDERED:

1. **ESTIMATED DAYS OF TRIAL:** 4

   ESTIMATED TOTAL NUMBER OF WITNESSES: 12

   EXPERT TESTIMONY EXPECTED: Yes **NO. OF EXPERTS:** 3

   Enter explanation (if necessary) here:

2. **ALTERNATIVE DISPUTE RESOLUTION [ADR].** (Pick one)

   At the time this Case Management Order is offered it does not appear that alternative dispute resolution techniques will be used in this civil action.

   Additional Information:

3. **CONSENT TO TRIAL BY UNITED STATES MAGISTRATE JUDGE.** (Pick one)

   The parties do not consent to trial by a United States Magistrate Judge.

4. DISCLOSURE. (Pick one)

The pre-discovery disclosure requirements have been complied with fully.

5. MOTIONS; ISSUE BIFURCATION. (Pick one)

Staged resolution/bifurcation of the trial issues will not assist in the prompt resolution of this action.

Early filing of the following motion(s) might significantly affect the scope of discovery or otherwise expedite the resolution of this action:

6. DISCOVERY PROVISIONS AND LIMITATIONS.

A. Interrogatories are limited to 25 succinct questions.

B. Requests for Production are limited to 25 succinct questions.

C. Requests for Admissions are limited to 25 succinct questions.

D. Depositions are limited to the parties, experts, and no more than

12 fact witness depositions per party without additional approval of the Court.

E. The parties have complied with the requirements of Local Rule 26(f)(2)(B) regarding discovery of electronically stored information and have concluded as follows:

The only ESI the parties anticipate would be electronic communications. E-mails should be produced in hard copy form.

F. The court imposes the following further discovery provisions or limitations:

☑ 1. The parties have agreed that defendant may obtain a Fed.R.Civ. P. 35 (L.U.Civ.R. 35) medical examination of the plaintiff (within subpoena range of the court) by a physician who has not examined the plaintiff, and that defendant may arrange the examination without further order of the court. The examination must be completed in time to comply with expert designation discovery deadlines.

☑ 2. Pursuant to FED.R.EVID. 502(d), the attorney-client privilege and the work-product protections are not waived by any disclosure connected within this litigation pending before this Court. Further, the disclosures are not waived in any other federal or state proceeding.

☑ 3. Plaintiff must execute an appropriate, HIPAA-compliant medical authorization.

☑ 4. The court desires to avoid the necessity of filing written discovery motions where court participation in an informal discussion of the issue might resolve it, even after the parties have been unsuccessful in a good faith attempt to do so. Consequently, before a party may serve any discovery motion, counsel must first in good faith as required by Fed. R. Civ. P. 37(a)(1). If the attorney conference does not resolve the dispute, counsel must contact the chambers of the magistrate judge to request a telephonic conference to discuss the issue as contemplated by Fed. R. Civ. P.16(b)(3)(B)(v). Only if the telephonic conference with the judge is unsuccessful in resolving the issue may a party file a discovery motion.

☐ 5. Other:

Additional information: Attorney Conflict with Trial Calendar: Mr. French may be out of town the first three weeks of October 2023.

7. SCHEDULING DEADLINES

A. Trial. This action is set for JURY TRIAL during a three-week term of court beginning on: December 4, 2023, at 9:00, a.m., in Jackson, Mississippi, before United States District Judge Carlton W. Reeves.

THE ESTIMATED NUMBER OF DAYS FOR TRIAL IS 4. ANY CONFLICTS WITH THIS TRIAL DATE MUST BE SUBMITTED IN WRITING TO THE TRIAL JUDGE IMMEDIATELY UPON RECEIPT OF THIS CASE MANAGEMENT ORDER.

B. Pretrial. The pretrial conference is set on: November 3, 2023, at 9:00, a.m., in Jackson, Mississippi, before United States District Judge Carlton W. Reeves.

C. Discovery. All discovery must be completed by: June 21, 2023.

D. Amendments. Motions for joinder of parties or amendments to the pleadings must be filed by: October 31, 2022.

E. Experts. The parties' experts must be designated by the following dates:

1. Plaintiff(s): March 21, 2023.

2. Defendant(s): April 20, 2023.

8. MOTIONS. All dispositive motions and *Daubert*-type motions challenging another party's expert must be filed by: July 5, 2023 .The deadline for motions *in limine* fourteen days the pretrial conference; the deadline for responses is seven days before the pretrial conference.

9. SETTLEMENT CONFERENCE.

A SETTLEMENT CONFERENCE is set on: July 10, 2023 , at 9:00 , a.m. in Jackson , Mississippi, before United States Magistrate Judge LaKeysha Greer Isaac .

Seven (7) days before the settlement conference, the parties must submit via e-mail to the magistrate judge's chambers an updated CONFIDENTIAL SETTLEMENT MEMORANDUM. All parties are required to be present at the conference unless excused by the Court. If a party believes the scheduled settlement conference would not be productive and should be cancelled, the party is directed to inform the Court via e-mail of the grounds for their belief at least seven (7) days prior to the conference.

10. REPORT REGARDING ADR. On or before (7 days before FPTC) October 27, 2023 , the parties must report to the undersigned all ADR efforts they have undertaken to comply with the Local Rules or provide sufficient facts to support a finding of just cause for failure to comply. *See L.U.Civ.R.83.7(f)(3).*

SO ORDERED:

9/29/22
DATE

s/LaKeysha Greer Isaac
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that Vicksburg Warren School District, defendant herein, has this date served in the above-entitled action:

1. Defendant's Initial Disclosures.

The undersigned retains the originals of the above discovery documents as custodian

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
265 NORTH LAMAR BOULEVARD, SUITE R
POST OFFICE BOX 1396
OXFORD, MISSISSIPPI 38655-1396
TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on October 13, 2022 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

ENTRY OF APPEARANCE

COMES NOW Morgan S. Hart, of the law firm of Daniel Coker Horton & Bell, P.A., Post Office Box 1396, Oxford, Mississippi 38655, and hereby enters her appearance as additional counsel of record for and on behalf of Defendant, Vicksburg Warren School District, in the above-styled and numbered civil action.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Morgan S. Hart
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
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TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on November 10, 2022 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Morgan S. Hart
MORGAN S. HART

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that, defendants herein, has this date served in the above-entitled action:

1. Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents.

The undersigned retains the originals of the above discovery documents as custodian.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT, BRYAN PRATT, ALONZO STEVENS, JAMES STIRGUS, JR., KIMBLE SLATON, AND NANCY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
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OXFORD, MISSISSIPPI 38655-1396
TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on February 7, 2023 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that, defendants herein, has this date served in the above-entitled action:

1. Defendants' Supplemental Responses to Plaintiff's First Set of Requests for Production of Documents.

The undersigned retains the originals of the above discovery documents as custodian.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT, BRYAN PRATT, ALONZO STEVENS, JAMES STIRGUS, JR., KIMBLE SLATON, AND NANCY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
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OXFORD, MISSISSIPPI 38655-1396
TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on March 6, 2023 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that, defendants herein, have this date served in the above-entitled action:

1. Defendants' Responses to Plaintiff's First Set of Interrogatories.

The undersigned retains the originals of the above discovery documents as custodian.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT, BRYAN PRATT, ALONZO STEVENS, JAMES STIRGUS, JR., KIMBLE SLATON, AND NANCY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
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OXFORD, MISSISSIPPI 38655-1396
TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on March 10, 2023 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that, defendants herein, have this date served in the above-entitled action:

1. First Set of Interrogatories Propounded to the Plaintiff by Defendants; and

2. First Set of Requests for Production of Documents Propounded to the Plaintiff by Defendants

The undersigned retains the originals of the above discovery documents as custodian.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
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265 NORTH LAMAR BOULEVARD, SUITE R
OXFORD, MISSISSIPPI 38655-1396
TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on April 7, 2023 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

NOTICE OF SERVICE

TO: All Counsel of Record

Notice is hereby given that, defendants herein, have this date served in the above-entitled action:

1. First Set of Interrogatories Propounded to the Plaintiff by Defendants; and

2. First Set of Requests for Production of Documents Propounded to the Plaintiff by Defendants

The undersigned retains the originals of the above discovery documents as custodian.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES - MS BAR NO. 100103
tpeeples@danielcoker.com
MORGAN S. HART – MS BAR NO. 106484
mhart@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
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TELEPHONE: 662-232-8979
FACSIMILE: 662-232-8940

CERTIFICATE OF SERVICE

I do hereby certify that on April 7, 2023 I filed with the ECF system which sent a true and correct copy of the above and foregoing document to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CIVIL ACTION NO. 3:22-cv-00265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT, et al. **DEFENDANTS**

ORDER

A settlement conference in this matter is scheduled for Monday, July 10, 2023 at 9:30 a.m. in **Courtroom 6D, United States Courthouse, 501 E. Court Street, Jackson, Mississippi.**

A settlement conference requires serious and thorough preparation. In accordance with Local Rule 16(g)(3), this Order sets out the procedures that the parties are to follow in preparing for the settlement conference, and the procedures that the Court will typically employ in conducting the conference. Counsel must provide a copy of this Order to their clients, and discuss these procedures with them before the settlement conference.

1. **PRIOR SETTLEMENT NEGOTIATIONS REQUIRED**. The settlement conference is not a vehicle to facilitate *the commencement* of settlement negotiations. The Court expects the parties to have *recently* exchanged **at least one written settlement demand and one written settlement offer**. To wit, at least fourteen (14) days before the settlement conference the plaintiff must serve on the defendant a written settlement proposal, which must include a specific demand amount. The defendant must respond to the plaintiff in writing with a specific offer amount. This exchange must occur within the specified time period, regardless of whether the parties have engaged in prior negotiations. The parties should not file or otherwise copy the Court on these exchanges. Rather, the parties must include their written settlement proposals in their respective Confidential Settlement Memoranda to the Court, which are due seven (7) days prior to

the settlement conference. The parties must employ these discussions with the intent that the case actually be settled, if possible, without court participation. In other words, the parties and their counsel have an affirmative, good faith duty to take settlement discussions as far as reasonably possible without the assistance of the court.

2. **ATTENDANCE OF PARTIES REQUIRED.** Unless the Court allows otherwise by otherwise by separate order, **parties with full settlement authority are required to attend the conference in person**. If a party is an individual, that individual must personally attend; if a party is a corporation or governmental entity, a representative of that corporation or governmental entity (other than counsel of record) with full settlement authority must personally attend; and if a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority must attend in person. The presence of the parties and their direct participation in the discussions and "give and take" that occur materially increase the chances of settlement. Moreover, a "few minutes of observation of the parties in the courtroom is more informing than reams of cold record." *Ashcraft v. Tennessee*, 322 U.S. 143, 171 (Jackson, J., dissenting). Thus, absent a showing of extraordinary circumstances[1], the Court will not permit a client or an insurance adjuster merely to be available by telephone. If extraordinary circumstances arise, counsel shall contact Judge Isaac's chambers with a written request to excuse a person's presence; said request shall set forth the extraordinary circumstances necessitating the request. **All participants in the settlement conference must be prepared to stay until at least 5:00 p.m. (Central Standard Time), unless the Court opts to terminate the conference earlier.**

3. **FULL SETTLEMENT AUTHORITY.** The Court reserves a substantial block of

[1] In all but the rarest instances, the time and expense of travel to the Southern District of Mississippi shall not be considered an extraordinary circumstance.

time for each settlement conference, both in preparing for the conference and in conducting it. The Court's time is wasted and opposing parties incur unnecessary expense if a party comes to the settlement conference with zero or limited authority. "Full settlement authority" means that **the person present at the settlement conference must be the decision maker.** The decision maker must have *both* authority to make a final and binding settlement *and* authority to make the decision to the last offer or demand. It does not require that any party make any particular offer or demand, but it does require that the person who is personally present be fully authorized to make the decision to the last offer or demand without having to get additional authorization from any person not present at the conference[2]. In cases involving governmental entities that require approval from a legislative body for settlement over a certain dollar amount, the Court will explain to counsel and the person present what it expects to be conveyed to the governmental entity.

4. **SANCTIONABLE CONDUCT.** A party who comes to a settlement conference without full settlement authority may be sanctioned. If a conference must be adjourned so that a party may obtain additional authority, that party may be sanctioned, including, but not limited to, fees incurred by the opposing party and/or their counsel with reconvening.

5. **CONFIDENTIAL SETTLEMENT MEMORANDA.** The court directs the parties to **submit a confidential settlement memorandum no later than seven (7) days prior to the scheduled settlement conference via e-mail (isaac_chambers@mssd.uscourts.gov)**. The memorandum shall set forth the following: (a) the relevant positions of the parties concerning factual issues, issues of law, and damages along with a candid assessment of those positions; (b) the settlement negotiation history of the case, including a recitation of the specific demands and offers that have been conveyed; (c) the names and positions of the individuals who will be

[2] If the person attending the settlement conference does not have authority to agree to a settlement without making a telephone call, then the person on the other end of that telephone call should attend the settlement conference.

attending the settlement conference; (d) possible settlement figures; and (e) whether the parties have adequate information to discuss settlement and, if not, how the parties will obtain sufficient information prior to the settlement conference to make a meaningful settlement discussion possible. **It will not suffice for a party to simply mention that it is prepared to negotiate in good faith.** The memo should include a settlement amount or range for which the party is agreeable to settle. The memo should not exceed five (5) pages in length. The memo will not be made a part of the case file or shared with any other party. Any party who fails to submit the required memoranda may be subject to sanctions.

6. **PRESENTATIONS AT SETTLEMENT CONFERENCE.** The attorneys must be prepared to give, if requested by the magistrate judge, a brief presentation **(five minutes or less)**, similar to an opening statement, outlining the factual and legal strengths of their case. The parties also may be permitted, if they wish, to make brief statements. The judge will then hold separate, confidential caucuses with each party.

7. **THE PARTIES SHOULD BE PREPARED TO DISCUSS THE FOLLOWING DURING SEPARATE, CONFIDENTIAL CAUCUSES AT THE SETTLEMENT CONFERENCE:**

- What are your objectives in the litigation?
- What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
- Do you understand the opposing side's view of the case?
- What are the impediments to settlement?
- What remedies are available through litigation or otherwise?
- Are there possibilities for creative resolution of the dispute?

- Are there outstanding liens? Does the plaintiff have a conditional payment letter identifying the amounts the lienholder has paid for which it will seek reimbursement?

8. **CONFIDENTIALITY.** The purpose of the settlement conference is to effectuate settlement of the case if possible, but the settlement conference will be conducted in such a manner as not to prejudice any party in the event settlement is not reached. All matters communicated to the magistrate judge in confidence will be kept confidential by the judge, and will not be disclosed to any other party.

9. **ASSESSMENT OF COSTS AND EXPENSES.** If a party appears at the settlement conference without having complied with the requirements of this order, then the court may cancel the settlement conference and assess against the non-complying party, attorney, or both, reasonable fees and expenses incurred by other parties in attending the settlement conference, as well as any expenses incurred by the court in attending the settlement conference.

SO ORDERED on this 1st day of June, 2023.

s/ LaKeysha Greer Isaac
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

v. — CASE NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

UNOPPOSED MOTION FOR EXTENSION OF DISCOVERY AND MOTION DEADLINES

COME NOW the defendants and file the following Unopposed Motion for Extension of the Discovery and Motion Deadlines:

1. The Court's Case Management Order [Doc. 7] set the following dates and deadlines:

   a. Discovery – June 21, 2023

   b. Motions – July 5, 2023

   c. Pretrial conference – November 3, 2023

   d. Trial – December 4, 2023

2. The parties have taken several depositions and have conducted a large portion of the discovery necessary to prepare this case for trial, but there are still several depositions that the parties need to take before trial.

3. The parties both request that the Court extend the discovery and motion deadlines until August 25, 2023, and September 8, 2023, respectively.

4. The foregoing Motion is not being filed for improper purposes or to unreasonably delay this matter. Counsel for the defendants certifies that the Motion is not opposed and is, in fact, supported and requested by the plaintiff.

WHEREFORE, PREMISES CONSIDERED, the defendants request that this Court enter an Order extending the discovery and motion deadlines until August 25, 2023, and September 8, 2023, respectively.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON, AND NANCY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

TIMOTHY M. PEEPLES, MSB 100103
tpeeples@danielcoker.com
DANIEL COKER HORTON & BELL, P.A.
265 NORTH LAMAR BOULEVARD, SUITE R
P.O. BOX 1396
OXFORD, MS 38655
(662) 232-8979 TELEPHONE
(662) 232-8940 FACSIMILE

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2023, I electronically filed the above foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Jessica Holly ("Plaintiff"), by and through counsel, files this Rule 56(a) Motion for Summary Judgement ("Motion") against Defendant Vicksburg Warren School District (the "District"). In support of its Motion, Plaintiff would show the Court the following:

On December 15, 2020, Ms. Holly was terminated from her job as Assistant Principal at the Vicksburg Intermediate School District ("the District") after working for 20 years in the District with no issues. The termination letter stated the sole reason was for taking medical leave (the day before her termination) on Monday, December 14, 2020. *Id*. Ms. Holly's doctor, however, recommended that she (after having taken 60 days of FMLA leave) take five additional days of leave to recover from a botched caesarian section surgery. Plaintiff was told that leave would be approved as long as her principal consented. Ms. Holly was terminated despite receiving approval, however.

Defendant terminated Plaintiff without notice or hearing in violation of long-established federal and state law protecting procedural due process rights. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). Moreover, Defendant arrived at its decision capriciously and arbitrarily, thus violating Plaintiff's substantive due process rights. In light of *Loudermill* and its voluminous progeny over the last thirty-five (35) years, it was

arbitrary and capricious, and reckless to disregard this established body of law and terminate Ms. Holly's contract without affording any pre-deprivation and post-deprivation due process remedies.

Defendant's stated reason for terminating Plaintiff—that is, because she failed to show up for one day of work without prior leave approval—belied the fact she followed proper protocols for receiving leave. Ms. Holly's principal, whose recommendation to terminate Ms. Holly without just reason was rubber-stamped by the School Board, conceded to the fact that Ms. Holly was terminated due to her perceived inability to work. The true basis for Ms. Holly's termination, therefore, violates the ADA. Further, by virtue of violating the rights above, Ms. Holly's contract for employment with Defendant was breached.

In support of this Motion and the contemporaneously filed Memorandum in Support thereof, Plaintiff relies on the following exhibits:

Exhibit A, Pl.'s FMLA Leave Schedule

Exhibit B, Pl.'s Affidavit

Exhibit C, Request for Additional Leave

Exhibit D, District's December 7, 2021 Response to Leave Request

Exhibit E, Pl.'s Dep. Transcr.

Exhibit F, Batty Dep. Transcr.

Exhibit G, Termination Letter

Ex. H, Request for Hearing

Exhibit I, District's Letter re Hearing

Due to the foregoing, Plaintiff respectfully requests this Court grant its Motion for Summary Judgment.

Date: August 21, 2023

Respectfully submitted,

By: /s/ Keith B. French
KEITH B. FRENCH LAW, PLLC
MS Bar No. 24115073

401 E. Capitol St., Suite 515
Jackson, MS 39201
(832) 243-6153
(832) 243-1927 – Facsimile

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and the foregoing was served upon counsel via electronic filing.

DATED this 21st day of August, 2023.

/s/ Keith B. French
Keith B. French

Employee Name Jessica Holly Employee ID 10632 Date 12/7/2020

[redacted]

VICKSBURG WARREN SCHOOL DISTRICT CALENDAR

2020-2021

Choose one or both

FMLA FFCRA

July 2020

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2020

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					17

September 2020

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			
					13	21

October 2020

Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
						22

November 2020

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					
						18

December 2020

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
						14

January 2021

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						19

February 2021

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						
						20

March 2021

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			
						18

April 2021

Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	
						20

May 2021

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					20

June 2021

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DATE	EVENT or HOLIDAY
Aug 3-6	Teacher PD Days
Aug 7-12	187 Day Employee Holiday
Aug 13-14	Teacher PD Days
Aug 17	Students' 1st Day
Sep 02	Early Release 63% PD Day
Sep 07	Labor Day Holiday
Sep 30	Early Release 63% PD Day
Nov 23-27	Thanksgiving Holidays
Dec 9	Early Release 63% PD Day
Dec 18	63% Day for Students
Dec 21-Jan 1	Christmas Holidays
Jan 04	Return from Winter Break
Jan 18	Dr. Martin Luther King, Jr. Holiday
Mar 15-19	Spring Break
Apr 2-5	Easter Holidays
May 26	RCEC Graduation
May 27	Students' Last Day /WCHS Graduation
May 28	Teachers' Last Day /VHS Graduation
May 31	Memorial Day

**This calendar reflects the adjustments made by the VWSD School Board on 8/5/2020.*

NINE WEEKS TESTING DATES

1st Nine Weeks	Oct 5-9
2nd Nine Weeks	Dec 14-18
3rd Nine Weeks	Mar 8-12
4th Nine Weeks	May 17-27

PROGRESS REPORT DATES

1st Nine Weeks-Sept 18	2nd Nine Weeks-Nov 20
3rd Nine Weeks-Feb 19	4th Nine Weeks-Apr 30

REPORT CARD DATES

1st Nine Weeks-Oct 23	2nd Nine Weeks-Jan 15
3rd Nine Weeks Mar 26	4th Nine Weeks-May 28

FFCRA

First day out Aug. 28, 2020

Last day out Sept. 10, 2020

FFRCA - Paid Sick Leave 10 Day Limit

FMLA

First day out Sept. 14, 2020

50 day mark Nov. 20, 2020

60 day mark Dec. 11, 2020

FMLA - 60 Day Limit

EXHIBIT

A

Expected date of return 01/04/2021.

EXHIBIT

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

DECLARATION OF JESSICA HOLLY

I, Jessica Holly, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. My name is Jessica Holly. I am of sound mind, at least eighteen (18) years of age, and have personal knowledge of the facts set forth in this Declaration.

2. I make this declaration on my personal knowledge, and could testify to the facts stated herein if called to do so.

3. I further attest that all of the facts contained in the Motion for Summary Judgment in the above-styled matter are true and accurate and are incorporated herein by reference.

4. On December 15, 2020, I was terminated from her job as Assistant Principal at the Vicksburg Intermediate School. I was under a written contract with the District for the entire school year, 2020-2021.

5. I was pregnant in 2020 which required me to miss 60 days at work. I took a leave of absence under FMLA from September 14, 2020, to December 11, 2020. I had a caesarian section on September 24, 2020, and my doctor cut my bowel during the operation. I had repair surgery that same day. My doctors later advised that I take an additional five days of leave so that I may recover from post-pregnancy surgery. Because of the Christmas break schedule, my return date would be January 4, 2021.

6. On October 30, 2020, I provided the District with disability forms filled out by my doctor explaining the need for the five additional leave days starting December 14, 2020. Over a month later, on December 7, 2020, the District responded to me with a 60-day notice letter, claiming that the additional days would be five days past my 60-day mark of December 11, 2020. The letter added that the additional leave would not be granted without approval from the principal at Vicksburg Intermediate School.

7. I was not concerned since I had already informed my principal, Lakeisha Batty, of my doctor's orders for additional leave a month before on November 4, 2020. In a telephone

conversation, Ms. Batty approved the additional leave on the condition that the paperwork be submitted to the District. Because my principal approved the leave, and the District had received the necessary paperwork, I had complied with her requirements for leave approval.

8. Nevertheless, I was sent a termination letter on the first day I did not show up to work on December 14, 2020, without a moment's notice. Oddly, when I was terminated, the District based its decision on the principal never approving my leave request. I was not afforded an opportunity to defend myself even though the basis for my termination was false.

9. I exhausted my administrative remedies in filing a charge with the EEOC on March 3, 2021, against the District. I received my "right to sue" letter via email on April 29, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of April, 2023.

By: /s/ Jessica R. Holly
Jessica Holly

VICKSBURG WARREN SCHOOL DISTRICT

Billia Knight <billia.knight@vwsd.org>

FMLA

1 message

Jessica Holly <jholly@vwsd.org> Fri, Oct 30, 2020 at 12:38 PM
To: Billia Knight <Billia.Knight@vwsd.org>

Good morning!
My doctor has extended my leave until January 4th. Her original date of discharge for me was December 14th. I am still being seen by her and now GI Associates. I have included her latest form for my disability since it has the new discharge date. I think that extension would put me at 4 days past the 60. Let me know if there is anything else I need to include.
Holly

783389BB-9E92-48EF-89B1-76BB24A82947.jpeg
3728K

EXHIBIT

C

JH00025

AMERICAN FIDELITY
a different opinion

Worksite Group Benefits Department | P.O. Box 25160 | Oklahoma City, Oklahoma 73125-0160
American Fidelity Assurance Company | 1-800-662-1113 | Fax: 1-800-818-3453 | **americanfidelity.com**

STATEMENT OF INSURED To be completed by Employee.

Full Name: (last, first, middle initial) Holly, Jessica R	Date of Birth: 5/14/78
Social Security Number: 587 59 3105	Account Number: / /
Mailing Address: (P.O. Box or street, city and zip code) 204 Alfred Drive Vicksburg, MS 39180	
Telephone Number (including area code): 601-415-0467	Email Address: jsschollyaaol.com
Employer Name: Vicksburg Warren Schools	
Name and birthday of spouse and dependents: Name: Ansah Holly Name:	Birthdate: 9/24/20 Birthdate: / /

DISABILITY INFORMATION

Is the disability due to: ☐ illness OR ☐ accident If accident, please describe the cause and details: If illness, diagnosis: Pregnancy	Date of onset: 2/9/20
Have you ever had the same or similar condition in the past? ☒ Yes ☐ No If so, when? 5/28/19	
Provide all current treating physicians' full name(s) and contact information (attach additional list if necessary): Charlene Collier 601-984-5325 Sarah Novatny [redacted] 815-2005	
Is your disability related to your employment/occupation? ☐ Yes ☒ No	If yes, have you or do you intend to file for Workers' Compensation? ☐ Yes ☒ No
On what date did you last work? 9/11/20	Dates of Total Disability: From 9/14/20 Through / /
On what date did you return to work? n/a /	Part Time / / Full Time / /
If not returned to work, when do you anticipate returning to work? 2/4/20	
Has the patient been confined to a hospital? ☒ Yes ☐ No If yes, give admit and discharge dates along with name and address of hospital.	Admitted: 9/24/20 Discharged: 9/27/20 Admitted: / / Discharged: / /
Name of hospital: Winfred Wiser Hospital Address of hospital: 2500 N State St. Jackson, MS. 39216	
If your request for benefits is approved, do you want us to withhold Federal Taxes from each benefit check? ☒ Yes ☐ No If yes, amount per month (minimum $88.00): $ 88.00	

Identify other income sources and amount of income which you are receiving or may be entitled to receive during this disability.
Please check yes or no for each of the following:

Your Social Security: (disability or retirement)	☐ Yes ☐ No Amount/month: $	Unemployment:	☐ Yes ☐ No Amount/month: $
Dependent Social Security: yes.	☐ Yes ☐ No Amount/month: $	Union:	☐ Yes ☐ No Amount/month: $
Sick Leave or Wage Continuation: [redacted]	☒ Yes ☐ No Amount/month: $ 283.74	V.A. Benefits:	☐ Yes ☐ No Amount/month: $
Retirement: (normal, early, or disability)	☐ Yes ☐ No Amount/month: $	Workers' Compensation:	☐ Yes ☐ No Amount/month: $
State Disability Income:	☐ Yes ☐ No Amount/month: $	Other Disability Coverage: (list)	☐ Yes ☐ No Amount/month: $

See employer Report of Sick Leave

Include a copy of your award or denial letter for any source in which one has been received.

I certify this information is true and correct. Signature: Jessica R Holly Date: 9/30/2020

AMERICAN FIDELITY a different opinion
JH00026
P.O. Box 25160 | Oklahoma City, Oklahoma | 73125-016
Toll Free Phone # 1-800-662-11
Toll Free Fax # 1-800-818-345
americanfidelity.co

Attending Physicians Statement Disability Claim Form to be completed by physician

Name of Patient: Jessica Holly | Date of Birth: 5/14/78 | Social Security Number: 587/59/3105 | Account Number:

DIAGNOSIS

Disabling Diagnoses (including complications): Pregnancy, Surgery - Cesarean section | ICD code: Z33.1

HISTORY

When did symptoms first appear or accident happen? 2/9/20 | Date patient first consulted you for this condition? 3/18/20

Has the patient ever had the same or similar condition? ☒ Yes ☐ No If yes, indicate when and describe:

Was the patient referred to you? ☐ Yes ☒ No If yes, provide full name, address, and phone number of referring physician:

Is the disability work related? ☐ Yes ☒ No

TREATMENT

Frequency of treatment: ☐ Monthly ☒ Weekly ☐ Other, describe:

Date of next appointment: 9/16/20

Please describe current treatment: Weekly visits, medication, labs

List all dates of treatment or medical attention since the disability began: Weekly 3/18/20 → Current

Is patient still under your regular care for this condition? ☒ Yes ☐ No

If no, please explain and provide name and phone number of the current treating physician:

Has the patient been confined to a hospital? ☒ Yes ☐ No
If yes, give admit and discharge dates along with name and address of hospital. Name: UMMC Address: 2500 N. State Street Jackson MS

Admitted: 9/24/20 Discharged: 9/27/20
Admitted: / / Discharged: / /

PROGNOSIS

Is patient now Disabled? For Regular occupation? ☒ Yes ☐ No For any Occupation? ☐ Yes ☒ No

Date total disability began: 9/14/20 What is the expected return to work date? 12/14/20

Is the patient released to return to work with restrictions? ☐ Yes ☒ No

If yes, From: / / Through: / /
Please list return to work restrictions:

IMPAIRMENTS

What are the disabling impairments that prevent the patient from working?

- ☐ Class 1 - No limitation of functional capacity, capable of heavy work. No Restrictions *(0-10%)
- ☐ Class 2 - Medium manual activity *(15-30%)
- ☐ Class 3 - Slight limitation of functional capacity; capable of light work activity *(35-55%)
- ☒ Class 4 - Moderate limitation of functional capacity; capable of clerical/administrative sedentary activity. *(60-70%)
- ☐ Class 5 - Severe limitation of functional capacity: Incapable of minimum sedentary activity *(75-100%)

Anticipated length of disability

- ☐ 1-2 Months
- ☐ 2-3 Months
- ☒ 3-6 Months
- ☐ 6-12 Months
- ☐ Greater than 12 Months
- ☐ Permanent

Please list functional limitations/restrictions that render your patient temporarily totally disabled: Surgery, Pregnancy, High blood pressure.

Do you expect any improvement or decline in functional status? ☐ Yes ☐ No If yes, please circle improvement or decline.

PHYSICIAN INFORMATION

Attending Physician's Name & Title: (print) Charlene Collier MD | Specialty: OB/Gyn
Phone: 601.984.5325 | Fax: 601.815.0983
Mailing Address: (P.O. Box or Street, City, State and Zip Code)
Form Completed By: (Name & Title) | Signature: | Date: 9/16/20

If you require completion of your own authorization for the release of medical records please submit the form along with the physician statement.

JH00028

AMERICAN FIDELITY
a different opinion

Worksite Group Benefits Department | P.O. Box 25160 | Oklahoma City, Oklahoma 73125-0160
American Fidelity Assurance Company | 1-800-662-1113 | Fax: 1-800-818-3453 | **americanfidelity.com**

Attending Physicians Statement Disability Claim Form to be completed by physician

Name of Patient:	Date of Birth:	Social Security Number:	Account Number:
Jessica R. Holly	5/14/78	587/59/3105	

DIAGNOSIS

Disabling Diagnoses (including complications): | ICD code:

Cesarean Section with complication of bowel injury and bowel resection

HISTORY

When did symptoms first appear or accident happen? 9/24/20 Date patient first consulted you for this condition? 9/24/20

Has the patient ever had the same or similar condition? ☒ Yes ☐ No If yes, indicate when and describe:

Was the patient referred to you? ☐ Yes ☒ No If yes, provide full name, address, and phone number of referring physician:

Is the disability work related? ☐ Yes ☒ No

TREATMENT

Frequency of treatment: ☒ Monthly ☐ Weekly ☐ Other, describe:

Date of next appointment: 10/26/20

Please describe current treatment: Monitor bowel function, constipation, appetite loss

List all dates of treatment or medical attention since the disability began:

Is patient still under your regular care for this condition? ☒ Yes ☐ No

If no, please explain and provide name and phone number of the current treating physician:

Has the patient been confined to a hospital? ☒ Yes ☐ No
If yes, give admit and discharge dates along with name and address of hospital.

Admitted: 9/24/20 Discharged: 9/27/20
Admitted: / / Discharged: / /

Name: Wiser Hospital - Umme Address: 2500 N. State St Jackson, Ms. 39216

PROGNOSIS

Is patient now Disabled? For Regular occupation? ☒ Yes ☐ No For any Occupation? ☒ Yes ☐ No

Date total disability began: 9/24/20 What is the expected return to work date? 1/14/21

Is the patient released to return to work with restrictions? ☐ Yes ☒ No

If yes, From: / / Through: / /
Please list return to work restrictions:

Anticipated length of disability: ☐ 1-2 Months ☒ 2-3 Months ☐ 3-6 Months ☐ 6-12 Months ☐ Greater than 12 Months ☐ Permanent

IMPAIRMENTS

Please list functional limitations/restrictions that render your patient temporarily totally disabled:

Heavy lifting

Do you expect any improvement or decline in functional status? ☒ Yes ☐ No If yes, please circle improvement or decline.

PHYSICIAN INFORMATION

Attending Physician's Name & Title: (print) Charlene Collier Specialty: Ob/Gyn

Phone: 601-984-1000 Fax:

Mailing Address: (P.O. Box or Street, City, State and Zip Code) 2500 N. State Street Jackson, MS. 39216

Form Completed By: (Name & Title) Signature: Date: 10/21/20

If you require completion of your own authorization for the release of medical records please submit the form along with the physician statement.

VICKSBURG WARREN SCHOOL DISTRICT

Billia Knight <billia.knight@vwsd.org>

FMLA - 60 Day Notice

1 message

Billia Knight <Billia.Knight@vwsd.org> Mon, Dec 7, 2020 at 5:00 PM
To: Jessica Holly <jholly@vwsd.org>
Cc: Lakesha Batty <lbatty@vwsd.org>, Lennie Little <lennie.little@vwsd.org>

Hi Ms. Holly,

I hope all is well. Please see the attached FMLA 60 Day Notice letter. I do have the email from you with an updated return to work date for January 4, 2021. This will be five days after your 60 day mark, which is December 11, 2020. These days will have to be approved by your principal.

Please let me know if this date still remains the same. Also, please have the doctor complete the return to work form attached to this email and return it to me before you return to work.

Please let me know if you have any questions or concerns.

Thanks,

Billia Knight
Benefits Manager
Vicksburg Warren School District
1500 Mission 66
Vicksburg, MS 39180
Office: 601.631.2817
Fax: 601.631.2819
billia.knight@vwsd.org

Every child deserves a champion – an adult who will never give up on them, who understands the power of connection and insists that they become the best that they can possibly be.

-Rita Pierson

Be a Champion!

2 attachments

Return to Work Release Form - Physician.pdf
620K

Jessica Holly 60 Day Notice.pdf
74K

EXHIBIT

D

Vicksburg Warren School District
1500 Mission 66 P O Box 820065
Vicksburg, Mississippi 39182
(601) 638-5122
FAX: (601) 631-2819

CERTIFIED MAIL

December 7, 2020

Jessica Holly
204 Alfred Drive
Vicksburg, MS 39180

RE: FMLA LEAVE EXHAUSTED

Dear Ms. Jessica Holly,

I hope this letter finds you recuperating and getting your strength back. Regrettably, I am writing to inform you that you will exhausted your 12 weeks of leave under the Family and Medical Leave Act (FMLA) on **Dec. 11, 2020.**

Unfortunately, you will have zero hours of FMLA coverage left therefore, you will no longer be protected under the FMLA as of December 12, 2020. You will be expected to return to work with a release from your medical provider. If you are unable to return to work, please contact me immediately to discuss your situation. Please remember all leave, with the exception of FMLA, must be approved by your principal and/or director.

If I can assist you in any way with this matter, please let me know immediately. You may contact me at 601-631-2817.

Sincerely,

Billia Knight

Billia Knight
Benefits Manager

cc: Principal
Director of Human Resources

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY

PLAINTIFF

V. CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND, NANCY BULLARD

EXHIBIT
E

DEFENDANTS

DEPOSITION OF JESSICA HOLLY

Taken at the instance of the Defendants via Zoom Teleconference, on Wednesday, May 17, 2023, beginning at 9:05 a.m.

REPORTED BY:

ROBIN G. BURWELL, CCR #1651

APPEARANCES:

KEITH B. FRENCH, ESQ.
Keith B. French Law, PLLC
401 E Capitol Street, Suite 515
Jackson, Mississippi 39201
kfrench@peoplefirstfirm.com

COUNSEL FOR PLAINTIFF

TIMOTHY M. PEEPLES, ESQ.
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265 North Lamar Blvd, Suite R
Oxford, Mississippi 38655
tpeeples@danielcoker.com

COUNSEL FOR DEFENDANT

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JESSICA HOLLY,

having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. PEEPLES:

Q. Good morning, Ms. Holly, my name is Tim Peeples. I represent the School District in the lawsuit that you filed. I'm going to take your deposition today.

Will you give the court reporter your full name, ma'am?

A. Jessica Renee Holly.

Q. Okay. Have you ever given a deposition before?

A. No.

Q. Okay. I know Mr. French probably covered this with you, but I'm going to ask you a bunch of questions. You answer truthfully, if you will, as best you can, okay? We're taking it by Zoom, so, you know, still haven't ironed out all the wrinkles. So if you don't hear me or I cut out or because the technology you don't know what I'm asking you, I want you to stop me, okay, and let me know.

A. Okay.

Q. And like you're doing now, if you will,

obviously, since we're in different places, verbal answer for any response you give, okay?

A. Yes.

Q. All right. If you need to or want to take a break for whatever reason. You just tell me. We can do that. We're not going to be here all that long, but you just say I want to stop. You don't even have to give me a reason, okay?

A. Okay.

I'm sorry, I'm going take a small break. I just want to make sure I have all my capabilities because we're still working something.

Q. You cut out.

(Off the record.)

Q (By Mr. Peeples) Ms. Holly, did you do anything to get ready for your deposition today?

A. Yes.

Q. Okay. And without telling me anything you and Mr. French may have talked about, tell me what you did to get ready for today.

A. Just tried to remind myself to not be nervous and just answer as truthfully as possible, tell the truth.

Q. Did you look at any documents, do

anything like that?
A. Yes.
Q. And do you know what documents in particular you reviewed?
A. Yes. Actually, I reviewed just some notes that I had. And I did have some documents from earlier in this suit.
Q. Okay. Have you provided Mr. French copies of whatever it was that you looked at to get ready for your depo?
A. Yes.
Q. Okay. Did you -- again, besides Mr. French, did you talk to anybody about your deposition?
A. No.
Q. Have you talked to anyone that's not a lawyer about your lawsuit?
A. No.
Q. What's your date of birth?
A. May 14th, 1978.
Q. And where do you live?
A. 204 Alfred Drive, Vicksburg, Mississippi 39180.
Q. Okay. How long have you lived at that address?

A. About 22 years.
Q. Did you grow up in Vicksburg?
A. Yes.
Q. Graduate high school at Vicksburg?
A. Yes.
Q. Did you go to college?
A. I went to Hinds Community College in Raymond and Mississippi College.
Q. And got a degree from MC, obviously?
A. Correct.
Q. And what's your degree in?
A. I have two. I have one in English 7 through 12, English education. And I have another one -- I have a masters degree in educational leadership.
Q. Okay. And is that the highest level of education you have, your masters degree?
A. Correct.
Q. Are you currently engaged in any kind of additional studies to obtain additional degrees?
A. No.
Q. And are you married?
A. No.
Q. Obviously, though, the case is about your leave while you were pregnant. So I know you

have a child, at least one child, right?
A. Correct.
Q. And is that your only child?
A. Correct.
Q. And how are you doing physically now? I know you had some complications with your pregnancy and delivery. Are you doing okay now?
A. I am.
Q. Good.
Q. Tell me about your work history. Have you been in education you're entire, sort of, adult work life?
A. I worked at -- it was McRaes back then but it was Belk now. I worked there before I came a teacher in -- I worked at Belk or McRaes from about 1996 to 2000. From 2000 to 2020 I worked at Vicksburg Warren School District.
Q. Okay. Are you working now?
A. Yes.
Q. What do you do now?
A. I am employed with Good Shepherd. I am founder and the director of Empower University.
Q. I always have a little difficulty hearing, partly because I'm old and partly because of the technology. So let me walk you through

that. So you work at Good Shepherd?
A. Correct.
Q. And what is Good Shepherd?
A. Good Shepherd is one of the community centers here in Vicksburg. It primarily is a day care, but they offer or they used to offer health services. They used to offer DUI services. I think they still do DUI services. And then my program, Empower University, has just been added to the Good Shepherd roster.
Q. And is that with -- did you say Good Shepherd or just The Shepherd?
A. Good Shepherd.
Q. And is that a paid position?
A. Yes.
Q. And what do you make now?
A. It's roughly 1250 every two weeks.
Q. And when did you start with Good Shepherd?
A. I started officially June of 2022.
Q. And your Empower University, tell me about that. What is that?
A. That is a program -- it's an educational support and mentor program for at risk students ages 9 through about 17. So I am still inside the

schools. The students can either be parent referred or they can be court ordered by youth court. Or they can be referred by any administrator of the Vicksburg Warren School District.

Q. And do you receive additional compensation for that position?

A. No, sir.

Q. Okay. That's just part of your role with Good Shepherd?

A. Correct.

Q. And so you -- you were terminated, right, December 2020?

A. Correct.

Q. Okay. And then started with Good Shepherd June 2022, correct?

A. Correct.

Q. So that roughly year-and-a-half period between Vicksburg Warren and Good Shepherd, did you do anything?

A. I was a stay-at-home mom. I did seek jobs but that was right midst of COVID, so it was very hard for me to secure employment. However, I did start working my program on my own January of 2022.

Q. Okay. And tell me about that. You started your own program?

A. This is the same Empower University. So I basically worked using whatever little money I had left to be able to help the students of the Vicksburg Warren School District.

Q. Did you make any money during that January to June 2022 period?

A. No, sir.

Q. All right. Just sort of developing that business and then it wasn't until June that you really started making income?

A. Correct.

Q. All right. Did you -- did you have any unemployment benefits or any other sources of income during that year-and-a-half gap between the School District and Good Shepherd?

A. I only used my retirement. That's the only income I had.

Q. Did you apply for unemployment benefits?

A. I did but I did not receive anything. I just decided to not go that route so no unemployment benefits, I did not.

Q. And no other -- did you apply for receive any other type of governmental benefits

during that year-and-a-half period?
A. Yes, sir, I did receive food stamps and also my child was on WIC.
Q. Okay. But no kind of disability benefits or anything like that?
A. No.
Q. All right. Have you ever been in a lawsuit like this where you've sued someone?
A. Not -- no, no.
Q. Have you ever filed, other than with respect to this lawsuit, an EEOC charge or is this the only one?
A. The only one.
Q. Okay. Have you ever been terminated from any other job?
A. No.
Q. You ever been convicted or pled guilty to a felony?
A. No.
Q. You ever been in bankruptcy?
A. Yes.
Q. Okay. Are you currently in bankruptcy or is that in the past?
A. No, that's in the past. That was -- I cannot remember, but my best guess was probably

around 2007, I believe.

Q. Okay. And that concluded and you got a discharge or it concluded in some way?

A. Correct.

(Exhibit 1 marked for identification.)

Q. (By Mr. Peeples) All right. Let me ask you -- I'm going to try to do this. What I'm about to show -- do you see this document I'm showing you?

A. Yes.

Q. It's the complaint. And I'm just going to scroll down through here. This is a legal document and sometimes plaintiffs like yourself have seen these, sometimes they haven't. That's fine. I just want to go over a couple of things in here, ask you questions about it. If you don't know something, you just tell me that.

This is Exhibit 1, is the Complaint. I'm going to scroll down to paragraph five under the facts section. That prior to December 15, 2020, that you had worked for the School District for about 20 years with no disciplinary actions. Is that accurate?

A. It's about 19-and-a-half years.

Q. Okay. And you were terminated

December 15 by letter, correct?

A. Correct.

Q. Okay. And at the time your position was assistant principal at the intermediate school; is that right?

A. Yes.

Q. What did you start out as when you started with the District?

A. I started as a teacher, high school English teacher.

Q. And how long did you do that?

A. For seven years.

Q. Okay. And what was your next position after teacher?

A. I was an assistant principal at the same high school.

Q. And did you get any particular training when you became an assistant principal or is this sort of learn on the job kind of thing?

A. No, I went back to MC and I received training in the educational leadership program. It's my master's degree that obtained -- that had the training to become a principal.

Q. And how long of a course of study is that?

A. It may be different now. Back then it was about 18 months or so.

Q. Were you -- and did you sort of stop working so you could take those courses or did you do them simultaneously?

A. I did them at the same time.

Q. Okay. And how long were you assistant principal at the high school?

A. I was there from 2007 to 2010.

Q. And what did you do after 2010?

A. I went to Vicksburg Intermediate as an assistant principal.

Q. Did you stay there from 2010 to 2020?

A. No, sir, I was there from 2010 to 2012.

Q. And what did you do after that?

A. I was actually moved from there to the junior high because of a principal who had gotten in trouble. So I was asked, or requested, to move from VI to Warren Central Junior High.

Q. And the principal was at the junior high that had the issue, right?

A. I don't understand the question.

Q. So you were at the Intermediate School and they moved you over to the junior high because of the junior high principal -- there was some

issue with the junior high principal?

A. It was an issue with an elementary principal.

Q. Okay. But they just needed you at a different spot because there was an issue with the elementary principal?

A. They needed to have equal men and women administrators is what I was told. So moving me to the junior high would be a balance between men and women.

A. Okay.

Q. How long did you stay at the junior high?

A. From 2012 to about 2017 or '18.

Q. And then where were you after that?

A. And then I moved back to Vicksburg Intermediate.

Q. Leading up to December 2020, you had been there two-and-a-half, maybe three full school years?

A. Correct.

Q. Okay. And so the principal that fall 2022 -- sorry, the fall of 2020 at the Intermediate School was Ms. Batty?

A. The fall of 2020, yes.

Q. Was she new to that school or had you worked with her before?

A. She was new to the school.

Q. Okay. Had you ever worked with her at a different school?

A. No.

Q. Okay. I saw some documents that Mr. French sent over last night. It looks like you and Ms. Batty did not hit it off, to say the least?

A. Correct.

Q. Is that accurate?

A. Yes.

Q. Tell me about your relationship with Ms. Batty.

A. It was very strained. The prior year I had gotten pregnant and lost my child, and I almost died. And I wanted to talk to her because I had just found out that I was pregnant prior to her coming. So I wanted her to -- I wanted to be clear that my health and the health of my child was at the very front of my concern, that I just wanted her to understand that, you know, what doctor appointments or whatever needed to be done that I absolutely was going to do it because I did

not want a repeat of the year before. And I think that is what caused the tension.

Q. And when did that discussion take place?

A. I'm not sure, but my best guess is around June of that year.

Q. Okay. And my mom was a teacher and I know teachers are different than administrators, but when -- so the fall 2020 semester -- I mean, school starts in August but you're there the whole summer or how does that work?

A. Yes, the way that our contract runs, principals have about 220 days that they have to work. So that would make it more than the elementary -- or more than a teacher. So we're there during that time preparing for the school year and just doing the necessary chores that administrators do.

Q. And this was just -- was this first meeting with Ms. Batty, was this couple of weeks into it. When was this discussion in relation to all of that?

A. I am not certain, but I could say -- that was not the very first conversation that we had. That may have been couple of weeks into her working.

Q. Do you have any belief or understanding of why she reacted like she did?
A. I have no clue.
Q. Okay. But you took it as she didn't like the message that you gave her?
A. I believe that's when it all started. That's what I think.
Q. Okay. And so -- and I'll show you, I've got it as an exhibit later, but you were fired by letter; is that correct?
A. Correct.
Q. And that was how you found out that you had been terminated was when you received the letter?
A. Correct.
Q. Okay. Did you ever -- so Chad Shealy, right, was the superintendent at that time?
A. Correct.
Q. Did you ever have a actual conversation with Mr. Shealy around December 15 or anytime after that?
A. No, sir.
Q. Did you ever talk to Ms. Batty after you received the termination letter?
A. No.

Q. Scrolling down. Paragraph seven indicates that you actually received the letter on the 17th; is that correct?

A. Correct.

Q. Okay. All right. And until you got that letter, you were -- you had no knowledge that you had been fired; is that fair?

A. That is fair.

Q. Okay. And that -- so December 17, it says here in paragraph seven of Exhibit 1 -- so that would have been a Thursday, correct?

A. Yes.

Q. And then it says on December 22, which I guess would be the Tuesday -- the following Tuesday, if I'm counting that correctly in my head, that you took a request for a post deprivation due process hearing to the School District; is that correct?

A. Correct.

Q. Okay. Without telling me what you may have discussed with an attorney -- did you do that on your own or did you do with the assistance of an attorney?

A. I did that with the assistance of an attorney.

Q. I've seen Bo Rideout, an attorney from Greenwood. Was that who was helping you?

A. Correct.

Q. How did you get in touch with Mr. Rideout? Did someone refer you or did you just happen to him know or how did that come to be?

A. No, I'm part of a professional organization and when the trouble started I reached out to them because I did not feel that the way I was treated was correct.

Q. Okay. And they referred you to him?

A. Correct.

Q. Okay. And it says that you -- basically, you left the letter on Ms. Reynolds' desk because no one was there; is that accurate?

A. Correct.

Q. Based on my other questions, I take it that you never heard directly yourself from Mr. Shealy?

A. I did not.

Q. Or anyone in his office, that you didn't hear from them directly?

A. No, sir.

Q. Okay. We'll scroll down to paragraph

10. Says essentially in January and into early February there were discussions about getting you a due process hearing. I certainly can let you read that as much as you need to. But that's the gist of it. Were you involved in those discussions or were those just being handled by your attorney?

A. Those were being handled by my attorney.

Q. Okay. All right. Paragraph 13, do you see that? It says on February 8, 2021, counsel for the School District advised that the best the District could do would be give you five or ten minutes at the February 25 meeting.

Now, I've looked through some of the letters, and maybe it's just I don't have the particular letter or haven't seen it. Do you know this February 8, 2021 reference, do you know if that was like a verbal conversation or a letter?

A. That was a phone call between my attorney and Mr. Briggs Hopson.

Q. Have you seen -- because I have not seen it, but again, I may just not have it. Have you seen any letter where the School District, either through its attorney or otherwise, said you can only have five or ten minutes at the board

meeting?

A. No.

Q. Your understanding, I take it, is that was from a verbal telephone conversation?

A. Correct.

Q. Okay. And as I understand it, you decided not to appear before the board on February 25?

A. Correct.

Q. And why did you choose not to go?

A. Because what I was told is that I would -- that the meeting would have parameters by which I would have and that it would only be about five or ten minutes after the board meeting. And I felt like I deserved a full due process hearing.

Q. In paragraph 16, your daughter was born September 24, 2020, right?

A. Yes.

Q. And then you had the doctor had nicked your bowel during the delivery, correct?

A. Correct.

Q. But we talked about this earlier, you're doing fine now, right?

A. Yes.

Q. Good. And then -- because I know that's

a pretty serious deal, right?
A. Correct.
Q. Have you filed any kind of medical malpractice suit against the doctor?
A. No.
Q. Paragraph 17, you went back for a followup appointment, right, just a regular scheduled appointment, I take it?
A. Yes.
Q. And then the doctor told you during that visit that instead of coming back to work on December 14, that you should take essentially another week off of work, which would amount to another couple of weeks off, right, because of the holiday break?
A. Yes.
Q. And then he provided you -- I think I've seen an e-mail where it's attached, and it's a very tiny attachment, but did he give you -- and I can't read it, which is fine, but did he give you an actual letter or note that said I want her to come back on January 4?
A. It was the disability paperwork, and it did have the day written, January.
Q. Okay. And I may have just not seen it.

And I have seen the American Fidelity document. Is that the one you're referring to?

A. Yes.

Q. Okay. And I've got that later here as an exhibit. It's difficult to read, but I'll get to that in a minute. But that's the document that he gave you -- he filled out that American Fidelity form and that's what you provided to the school district?

A. Correct.

Q. And it says -- paragraph 18 talks about that letter. And it says you turned it into the district. To whom did you turn that in?

A. Billia Knight.

Q. What's her position?

A. She is the benefits manager at the School District.

Q. Is that who you were normally dealing with for FMLA stuff?

A. Yes.

Q. All right. And of course, now that I look I see that in the next paragraph. You see paragraph 19, Billia Knight works in the HR office, is over benefits and FMLA. So that's your understanding, that's correct?

A. Correct.
Q. See in paragraph 17, do you recall the date of that appointment?
A. I don't.
Q. And then I'll scroll back down to paragraph 19. Ms. Holly sent Ms. Knight an e-mail on October 30, 2020. That's the day that you sent in the doctor's note, right?
A. Correct.
Q. So obviously that appointment would have at least been earlier that day or a couple of days before that?
A. Correct.
Q. And then -- so it -- paragraph 21 of Exhibit 1 mentions the e-mail from Ms. Knight. She e-mailed you back on December 7, 2020, correct?
A. Correct.
Q. And between the October 30 and December 7 e-mails were there any e-mail communications with you and the School District?
A. No.
Q. Not just Ms. Knight, but anyone at the District, were you e-mailing with Ms. Batty or anyone else during that time period?

A. No, but I do know that -- I believe Ms. Knight e-mailed Ms. Batty and Dr. Little -- or they were CCed in that e-mail that she sent me.

Q. Are you're referring to December 7?

A. Uh-huh. (Affirmative response.)

Q. All right. So the December -- and I think I -- and I'll show that to you and we'll cover that in a little more detail. December 7 was the first time you got a written response to your October 30 e-mail; is that fair?

A. Correct.

Q. All right. And then paragraph 22 essentially says that you had already spoken to Ms. Batty about a month earlier; is that accurate?

A. Yeah, that's...

Q. And you had a -- I think I saw in some of your documents a 14, 15-minute phone call with Ms. Batty?

A. Correct.

Q. Okay. It says you told her how you were doing, that you needed an extra week, surgery. I think she maybe she asked how were you doing, that sort of thing. Anything else that you recall about that conversation?

A. Yes, she -- I had not talked to her

about what happened so I explained to her, you know, what happened and my reasoning for needing the five days. And she told me as long as I -- she asked me had I contacted Billia Knight and I told her I had. And then she said, then we're good.

Q. Okay. I wanted to ask all of that. So you sent the report -- the doctor's note to Ms. Knight October 30, correct?

A. Correct.

Q. And then it was December 7 when she responded by e-mail, and that was when -- the first time she said in writing you need to get this approved by the principal, Ms. Batty.

A. Right.

Q. And so I was curious why you had reached out to Ms. Batty before the December 7 letter, because you called her November 4. And what was going through your mind at that time? Was there a reason you called Ms. Batty before you got Ms. Knight's e-mail?

A. Yes. I sent Ms. Knight the e-mail in October. I contacted Ms. Batty to talk to her to get her to approve the five extra days.

Q. Okay.

A. After that, she asked me had I spoken to Billia, and I told her I had. Then she said then we're good.

Q. And I guess what I'm getting at -- and I follow your timeline. I understand what you're saying. How did you know or why did you think to call Ms. Batty to get approval for the other five days before Ms. Knight put that in writing to you?

A. It was already mentioned in my prior paperwork before I even took leave. So that was already discussed, if I needed more than my 60 days of FMLA then I needed to get approval from my principal. When I knew I needed the five extra days, that's when I contacted Ms. Batty.

Q. Okay. I follow you. Was that in some of the FMLA paperwork that you were given by the School District?

A. Yes.

Q. And then paragraph 23 sort of describes what you told me about the conversation. Was it a single phone call with Ms. Batty?

A. Yes.

Q. And she didn't document any of that in writing as far as you're aware, are you -- or did she?

A. I (unintelligible) anything else.
Q. Okay. Were you under the impression that a phone call would suffice for getting approval, or were you given any information that -- look, you've got to turn in a form or send an e-mail? What was your understanding?
A. My understanding was that if you needed -- well, it was told if you needed more than 60 days you have to get approval from your principal. So when I received the paperwork stating that I need the five extra days, I sent that to Billia and then I contacted Ms. Batty to make sure that she would be okay with the five extra days.
Q. Okay. And her statements to you was -- the gist of it was if you spoke to Ms. Knight then we're good?
A. Yes.
Q. So you get the e-mail and I think you also received a certified letter that was dated December 7. I assume you probably didn't get that for a day or two, right?
A. I'm not sure.
Q. Okay.
A. I just know that was the Friday

before -- let me go back. Restate that.

Q. Sure. That was a multi-pronged question. So you received an e-mail on December 7th, correct?

A. Yes.

Q. And that was from Ms. Knight?

A. Correct.

Q. And she also sent you that same day a certified letter along the same lines as the e-mail; is that correct?

A. I did not receive a certified letter from Ms. Knight.

Q. Okay. I'll show you that in --

A. That's a letter but I don't believe it was certified. I didn't sign for it.

Q. Okay. You received an e-mail and a letter?

A. Yes.

Q. Okay. All right. Fair enough. And then after you received the December e-mail -- because I assume you probably got the e-mail before the letter?

A. Correct.

Q. And what did you do when you got the e-mail?

A. When I got the e-mail I didn't do anything else because I had already stated -- I had already talked with Ms. Batty and I just thought that was just a letter that she needed to do to just make sure that, you know, everything was good.

Q. Okay. Your assumption was I've already spoken to Ms. Batty?

A. Correct.

Q. Did it concern you that you received the December 7 letter, or what did you think when you got it?

A. No.

Q. You didn't think at any point, well, you know what, they clearly have dropped the ball and I need to reach out. That didn't enter your mind?

A. No. And also, that letter -- that e-mail, Ms. Batty and -- Ms. Batty had a copy of that e-mail, so no.

Q. Okay. And that's what you were telling me earlier. That's the e-mail you said that Ms. Batty and -- who else was copied on it?

A. Dr. Little.

Q. And Dr. Little was the HR director?

A. Yes.

Q. And then -- so is it accurate to say that between December 7 and December 14, when Dr. Little called you, really nothing went on as far as trying to get, you know, additional time or discussions. There was just sort of a week and nothing really happened; is that fair?

A. Yes.

Q. Okay. And then paragraph 28 of Exhibit 1 says December 14, Dr. Little called you.

A. Yes.

Q. Tell me about that phone call.

A. Dr. Little called me. I think it was almost 4:00 on that day, and she asked me why I had not come to work. And I explained to her that I had already talked to Ms. Batty and I had already sent the paperwork over to Billia. She said, well, I don't know anything about that. You need to contact Ms. Batty immediately.

When I hung up with her, I was trying to figure out what's going on, because I've gotten this together. But I called Ms. Batty, Ms. Batty did not answer the phone so I left her a voicemail. I waited a few minutes for Ms. Batty to call back.

So when she didn't, I contacted Cedric

Magee, because Dr. Magee is my immediate supervisor -- well, he's Ms. Batty's and I's supervisor. So when I couldn't get her, I just went down the chain of command and I contacted him.

Q. I think I've seen where you spoke to Mr. Magee but he essentially could not get you any info about what was going on; is that accurate?

A. I spoke with Dr. Magee. He had no knowledge of what was happening and he told me that he needed some time to investigate it and he would get back with me.

Q. Okay. And then -- so -- you spoke to him on the 14th?

A. Yes.

Q. And then what happens after that?

A. I did not hear anything from anyone. So by Thursday I e-mailed Dr. Magee and I said, listen, have you heard anything? I'm sick with worry, you know, I don't want to be fired. And he responded back, I have not heard anything.

Q. Okay. And what day of the week was the 17th -- is that what you said, the 17th?

A. That was the Thursday before I received certified letter.

Q. Okay. I just want to make sure. December 14, was that a Monday?
A. Yes.
Q. Okay. And then you had that e-mail with Cedric Magee that Thursday, which would be the 17th?
A. Correct.
Q. Okay. And then at that point were you aware that you had been terminated on the 15th?
A. No.
Q. And you found -- but you did find out at some point on the 17th that you had been terminated, right?
A. Yes.
Q. Okay. Scroll down. All right. I'm going to show you Exhibit 2.
(Exhibit 2 marked for identification.)
Q. (By Mr. Peeples) Is December 15 letter to you. That's your address on there, it looks like?
A. Correct.
Q. And this is the letter where Mr. Shealy notified you that you had been terminated, right?
A. Correct, I received that letter.
Q. And that's Exhibit 2.

(Exhibit 3 marked for identification.)

Q. (By Mr. Peeples) Let me show you Exhibit 3. This is your December 22 when you went back up to -- this is the one we talked about earlier. You left this letter at the School District because no one was there and requested a hearing, right?

A. Correct.

(Exhibit 4 marked for identification.)

Q. (By Mr. Peeples) And then let me show you a number four. See that? This is the October 30 e-mail, right? And that's that picture I was telling you about which I think you explained is the American Fidelity form. Which I can see that now. Is that right?

A. Yes.

Q. Okay. And that's where you advised -- just to Ms. Knight, but you advised to Ms. Knight about the need for more time?

A. Yes.

Q. Okay.

(Exhibit 5 marked for identification.)

Q. (By Mr. Peeples) Let me show you -- this is Exhibit 5. Exhibit 5 is the December 7 e-mail, right? That's the one that we talked

about earlier?

A. Yes.

Q. And I see where you're saying Ms. Batty and Dr. Little were copied on the e-mail?

A. Yes.

Q. That's what you told me about earlier. Okay. And then -- I don't know that I've got copies of -- you see these attachments down here, Return to Work Release form and 60-day Notice. Do you have copies of those documents?

A. I do; however, the Return to Work Release Form was not completed. I did receive those.

Q. Okay. And tell me about -- were those forms that you needed to complete or that the School had completed? What are those forms?

A. The Return to Work was one my doctor was supposed to complete. And then I think the 60-day Notice was just, I guess, a copy of what she had sent me there.

Q. Okay. And so you got this on the 7th. Did you understand her to be asking you -- I think it says in here, please have the doctor to complete the form, Return to Work Form?

A. Yes, when I (unintelligible) work,

correct.

Q. You cut out just a tad. Say that again.

A. Yes, before I returned to work I got that. I understood that the doctor needs to complete that.

Q. Okay. And that was more of a so you can come back as opposed to a -- he needs to give you written permission to stay off another week. That's what that was, right?

A. Correct.

Q. All right. And then let me show you Exhibit 6.

(Exhibit 6 marked for identification.)

Q. (By Mr. Peeples) It's the December letter -- it shows Certified Mail. I know you said you thought it was just regular mail. It's not a big deal. But you got this letter at some point?

A. Yes.

(Exhibit 7 marked for identification.)

Q. (By Mr. Peeples) All right. Let me show you number seven. This is September 8, 2020 e-mail to Ms. Knight. And you're asking her to send you FMLA paperwork, right?

A. Correct.

Q. Any issues with getting -- I know, obviously, at the end there was an issue about them letting you go. But as far as the first part of it when you're taking FMLA, any issues with that?

A. No.

Q. No issues getting the paperwork or getting approved, nothing like that?

A. No.

(Exhibit 8 marked for identification.)

Q. (By Mr. Peeples) And then this next one, Exhibit 8, where she's sending you the various FMLA forms about a week later, right?

A. Correct.

(Exhibit 9 marked for identification.)

Q. (By Mr. Peeples) And then Exhibit 9 is a letter from looks like your doctor. Did you provide this letter to the School District?

A. Yes.

Q. Okay. And that's just saying that you had just sort of started your maternity leave a couple of days earlier?

A. Correct.

Q. I think your daughter was born maybe 10 days after the start of maternity leave?

A. Correct.
Q. And then let me show you Exhibit 10.
(Exhibit 10 marked for identification.)
Q. (By Mr. Peeples) It's two-page -- looks like, you know, FMLA forms. Do you recognize these documents?
A. Yes.
Q. And then let me show you on Page 2. Do you see this third checkmark where it says while on leave you will be required to furnish us with periodic reports of your status and intent to return to work every two weeks. Is that something did you while you were out?
A. I don't remember doing every two weeks, no.
Q. Okay. Did anyone from the school ever ask you about, you know, progress reports or updates or anything like that?
A. No. The only thing I turned in was I had to do the attendance every week on my being absent from work. So I did do that every week.
Q. Okay. And how would you -- explain to me how you would do that and what that looks like.
A. That was just my payroll. So every week I would have to send -- I would have to fill out

that I was out from this day to this day, which basically was Monday through Friday. And I had to turn that into my principal so that she could turn it into, I'm assuming, Dr. Little.

Q. Were you on unpaid leave or paid leave on your FMLA?

A. I was on paid leave at first.

Q. Okay. Until you ran out of your regular PTO, I guess?

A. Correct.

Q. Okay. And then the remainder of just regular just straight FMLA, you just were unpaid?

A. Correct.

Q. All right. I'm going to show you this next document, Exhibit 11.

(Exhibit 11 marked for identification.)

Q. (By Mr. Peeples) Looks like your doctor's certification, right? It looks like -- I'll scroll down. And is that Charlie Collier?

A. Charlene.

Q. Charlene, okay. And that was your treating physician?

A. Yes.

Q. And then that was signed it looks like September 16?

A. Correct.
Q. Okay. And that's something you provided to the school?
A. Yes.
Q. And then let me show you Exhibit 12.
(Exhibit 12 marked for identification.)
Q. (By Mr. Peeples) This is an awful, awful picture. But that's the form, the American Fidelity form that we've talked about several times today?
A. Yes.
Q. And that's the form that you would have turned in on October 30?
A. Yes.
Q. And I know Mr. French provided me a better copy. I did not have time to scan it this morning, but your understanding is that on this form that's difficult to see, somewhere on there is where the doctor expresses that you need additional time off?
A. Correct.
Q. Okay.
(Exhibit 13 marked for identification.)
Q. (By Mr. Peeples) All right. And then let me show you Exhibit 13. This is an affidavit

from Dr. Little. And I want to ask you specifically about paragraph three where she mentions her telephone call with you. Do you -- if you will, read that and tell me if you have any disagreements with what she says on there.

A. I have no disagreement.

Q. Okay. And then paragraph four, my assumption is you would disagree with that; is that fair?

A. I would disagree with that.

Q. All right.

(Exhibit 14 marked for identification.)

Q. (By Mr. Peeples) Then let me show -- Exhibit 14 are your disclosures. Again, another pleading that you may or may not have seen. I want to ask you about some of these. These are witnesses that I'm going to ask you about. The first one's obviously you. Second one is your doctor, right?

A. Uh-huh. (Affirmative response.)

Q. And then third one is Tasha Thompson. So she is teacher at Intermediate School, correct?

A. She was.

Q. She was or is?

A. She was. She's no longer there.

Q. Where is she now?
A. I think she works between Vicksburg Junior High and Warren Central Junior High.
Q. Okay. Still with the District, just at a different school?
A. Correct.
Q. Okay. And so what do you think that Ms. Tasha Thompson knows about your lawsuit?
A. She doesn't know much. She doesn't know much. She only knows what happened in the exchange between Ms. Batty and her and then a conversation that she shared with me, or a text message. She was telling me about the conversation that Ms. Batty had with her. That's it.
Q. Do you know what the nature or substance of the discussion with Ms. Thompson and Ms. Batty was?
A. Yes, she said that Ms. Batty was asking them, and them meaning her and the other leadership people, when I was returning back to work. And I explained to her that I had already talked with Ms. Batty about my return to work and that I didn't understand what Ms. Batty was doing because we already talked about that in detail.

Q. Okay.
A. And so that was the gist of it.
Q. So the communication that you had with Ms. Thompson would have been after your phone call with Ms. Batty?
A. I'm sorry?
Q. When you spoke to Ms. Thompson, you had already had that November phone call with Ms. Batty, right?
A. Yes, correct.
Q. And --
A. (Inaudible) Ms. Thompson.
Q. Is Ms. Thompson -- did she reach out to you or are y'all friends and you just talk regularly? Or how did you come to talk to Ms. Thompson?
A. Yeah, she reached out to me. And yes, she was checking up on me because -- I mean, we work together. So she was just making sure my baby and I were good. In fact, that's when she referred -- that's when she spoke to me about -- or text me about that.
Q. Okay. And Ms. Reynolds, I know we've mentioned her. She's the secretary at the superintendent's office. Does she know anything

other than you left that request for a hearing?

A. No.

Q. Okay. And then Brian Pratt, Alonzo Stevens, James Sturgis, Kimbal Slaton and Nancy Bullard, those are or were board members. Do you know if they knew anything?

A. I would imagine they should. They voted, or somebody voted to terminate me. So I would assume they do.

Q. All right. And I think that's a fair assumption. They would know whatever they were advised by Mr. Shealy or whoever appeared before them, but do you know if -- or do you think they would know anything beyond that, what they were told and heard?

A. No, whatever they were told. There's no way I could know that.

Q. Okay. Well, and I know that sounds like a dumb question, but you know, sometimes people will say well, I actually talked to Mr. Pratt and he told me this. You didn't have anything like that?

A. No.

Q. All right. And then Ms. Knight, we've spoken about her several times. Anything else you

think she would know?

A. I can't say.

Q. Okay. Ms. Batty, talked about her at length, right?

A. Uh-huh. (Affirmative response.)

Q. Same with Dr. Little?

A. Yes.

Q. Cedric Magee. You've told me about your interactions with Mr. Magee. Anything else that -- any other interactions with him that you think would be relevant?

A. No.

Q. Okay. Chad Shealy, former superintendent. Does he know anything that we haven't already covered?

A. I can't -- I wouldn't know.

Q. All right. Had you ever been written up for work performance issues?

A. No.

Q. You ever had any -- and I don't mean that verbal coaching, but any kind of corrective action that was just in the form of verbal?

A. Not that I can recall.

Q. I'm going to show you a couple more exhibits.

(Exhibit 15 marked for identification.)

Q. (By Mr. Peeples) This is Exhibit 15. It's a letter from Bo Rideout to Briggs Hopson, who is one of the School Board attorneys. Do you know who Mr. Hopson is?

A. I do.

Q. Okay. Before all this happened, did you know who he was or do you just know through this lawsuit?

A. Yes.

Q. And that was sort of a bad question. You answered yes. Did you know him before the lawsuit?

A. I did before the lawsuit, yes.

Q. All right. And this letter just -- part of it is asking for a hearing. You see that in this second -- "my second question," see that?

A. Yes.

(Exhibit 16 marked for identification.)

Q. (By Mr. Peeples) Okay. And then Exhibit 16 is another letter to Briggs Hopson. Did you ever send any letters, yourself, to Mr. Hopson?

A. No.

Q. Okay.

(Exhibit 17 marked for identification.)

Q. (By Mr. Peeples) And then Exhibit 17 is a February 12 letter. Did you receive a copy of this particular letter? It's from Mr. Hopson to Bo Rideout?

A. Yes.

Q. And you see in this paragraph right here that starts with nevertheless. It says the School District is willing to give her a post termination hearing at the next School Board meeting.

Do you -- other than what you told me earlier, do you have any information to suggest that you would not have been given a full hearing on February 25?

A. No.

(Exhibit 18 marked for identification.)

Q. (By Mr. Peeples) And then this document is commonly referred to by attorneys as a Notice of Claim, and it's Exhibit 18. Do you remember seeing this letter, it's several pages long?

A. Yes.

Q. Okay. Let me ask you -- let me ask you about this paragraph. On December 14, 2020, Dr. Little contacted Ms. Holly. Read that paragraph if you will and tell me if you have any

disagreements with what's in there.

A. On December 14, 2020 Dr. Little, from Human Resources contacted Jessica Holly. Dr. Little told Holly she had no information about Holly having previously contacted her building principal and immediate supervisor, Dr. Batty, to get Batty's approval on the five extra sick day -- leave days and return to work on January 4th, after the Christmas break instead of the original return date on December the 14th, 2020.

Q. Is that accurate to the best of your knowledge?

A. Okay. I don't understand what you're asking me. What are you asking me?

Q. Yeah, I'm just saying is that -- to the best of your knowledge, is everything in that paragraph accurate?

A. Yes.

Q. And then that next paragraph, Holly explained to Dr. Little she had talked with Dr. Batty -- I think it's Ms. Batty. But regardless, that you had talked with her in November and you had cleared up the issue. Is that accurate as well?

A. Yes.

Q. And then did Dr. Little tell you during your call I have no knowledge of the November call and that you need to call Ms. Batty again?

A. Yes.

Q. Okay. And that's what you're talking about, you tried to -- and this sort of outlines that. You tried to and could not reach Ms. Batty?

A. Correct.

Q. All right. I understand that perhaps you didn't work very many days once the 2020 fall school actually started; is that accurate?

A. Yes.

Q. I know you were out for COVID, close contact, right?

A. Yes.

Q. And then you had obviously went out on maternity leave, correct?

A. Yes.

Q. Do you know how many days you worked that calendar year?

A. I don't.

Q. Or school semester year?

A. Yeah, I don't remember.

Q. All right. And what was your salary in

the fall 2020, spring 2021 school year?
A. It was about 73,000.
Q. And I know you mentioned -- I forget the exact number but 220 or so working days. Were you paid -- I know some schools do it a little bit differently, but do they spread out that 73,000 over the course of a 12-month period?
A. Yes.
Q. And when does that period start and end?
A. I believe it runs from either June or July to the next June or July.
Q. Okay. And who is Jennifer Holmes? Is that your sister?
A. Yes.
Q. Okay. And then who is Tracey Shells?
A. She was the librarian at Vicksburg Intermediate.
Q. Okay. And who is Melanie Jones?
A. She is -- she works at Vicksburg Intermediate. She was like a reading specialist.
Q. Are there -- besides the people that we've talked about, there anyone else that you know of that knows about your going out on leave or you being terminated or anything else related to your lawsuit? Have we covered all of the

pertinent witnesses?

A. I'm sure there are.

Q. Okay. Look, I mean, I only get to ask you questions today. I don't get to call you up so that's why I ask you. If there's anybody else as we sit here right now that you know of, I'd like to know who that person is or those people are. Anybody like that come to mind?

A. I mean, other than the people -- people would know because it was on school docs, the fact that I got terminated.

Q. What's school dots? What is that?

A. That is the online resource that you can go to and read the minutes of the school -- read the school board minutes. So when they hire and fire people they place it is in the school board doc and it's accessible to anybody who pulls it.

Q. Okay. And that's -- you answered my question appropriately and I didn't really ask it in a great way. So what I meant was more of who would know -- not that you were fired, not that that's not an important part, but would know about facts that led to your being terminated. Anybody that comes to mind that we haven't already covered?

A. I'm sure people know. I mean, there -- I can't tell you who all would know. But yes, I'm sure people know.

Q. Okay. Have we talked about all of the people that, insofar as you know, were involved in the decision to terminate you?

A. I don't think of anybody else that we haven't already mentioned.

Q. Okay. All right. And any documents or notes or diary entries, any kind of physical documents that you have that are related to your lawsuit, have you given all of those to Mr. French?

A. Yes.

Q. Are there any that you know of that you had back in the past that you have lost or thrown away or accidentally discarded?

A. I may have. I don't know, I can't answer that.

Q. Have you -- do you contend that you have -- well, I try ask this in a way that a normal person could understand and I may not be able to.

Do you claim that you are entitled to damages for emotional distress?

A. I do.

Q. Okay. And can you tell me like what would be the -- I understand nobody likes to get fired, but can you tell me -- give me sort of a basis for a claim for emotional distress that you would be making?

A. I don't -- I mean, I can't put it in into dollar amounts because I don't know that.

Q. Okay.

A. So I guess I'm not understanding your questions. Are you asking me to put it into a dollar amount or are you asking -- I don't understand what you --

Q. No, ma'am, I'm not asking for you to give me a dollar amount that you want to recover, but more of a -- tell me about from, you know, like a mental health status and how it made you feel. Because what I want to be able to do is I want to hear from you -- if we were to go to trial -- I want hear from you today what I might hear if we were to go to trial.

A. Okay. So, I mean this whole thing has really taken a toll on me. I've worked for the School District half of my life and I've made relationships and -- it was very devastating.

And as I told you, some people do -- they have access to school docs, so I've been inundated -- and I even went through a time where I didn't even want to go out in public because I would have people constantly asking me what happened, what did you do.

It was devastating to be fired with a newborn the week before Christmas. It was also devastating be fired during the height of COVID because that made securing a job very hard. So I have a newborn and I have no job that I've had half of my life. So I had to try to figure out how in the world to get my life back. What do I do to try to get back to where I used to.

And it has been a struggle. It has -- I have been without money. I have been -- I just wouldn't wish that on anybody. And that's one of the reasons why I waited so late to have children and that's because I truly love working with children. And as long as I've worked in the District I've had kids that I consider like my own. And I mean I've had children stay with me, I've taken children to church. And so to have that ripped away from me, that's hard.

So yes, I became depressed. Yes, I had

to go to seek counsel because I truly was lost. I had no clue how to get back to the person I was. And on top of it, how do I take care of a newborn with nothing. So it has been very devastating to me. And you have to know that I love children to -- even though all of this has happened to be able to go back and still work in a district that threw me away.

Q. Thank you for that, yes, ma'am. You mentioned counseling. You've received professional counseling?

A. Yes.

Q. Where did you go for that?

A. I've gone to UMC and -- oh, I can't think of the place. There's a place -- Crossroads in Clinton, I've been there as well.

Q. Okay. And how many times do you think you've been to UMC for some counseling?

A. I believe I've gone twice and I think I've gone to Crossroads several times. And I am on antidepressants even now.

Q. What do you take and how often do you take it?

A. I'm taking Amitriptyline, and I take that every day.

Q. Okay. And who's your doctor that prescribed that for you?

A. That would be my doctor, the attending physician that I saw at UMMC. And I can't remember her name because she's no longer there. She was the one who -- it started with Cymbalta, that I was taking the Cymbalta for two things, the fibromyalgia that came back with the stress and then also the depression. And so my medicine has been changed to Amitriptyline because it's a little easier on my stomach.

Q. Okay. And you started taking the Cymbalta after your termination?

A. Yes.

Q. Had you ever taken any Cymbalta, Amitriptyline, any other antidepressants before December 2020?

A. I have taken Cymbalta before. I have a condition that's called fibromyalgia and fibromyalgia surfaces when you have trauma or stress -- any trauma to your body. And so -- I think I was diagnosed with fibromyalgia like in 2010 but it's been years since I've even had to take that medicine. And then it came back when -- well, it came back after I was terminated.

Q. Okay. Who did you see in 2010 and -- however long you were receiving treatment, who were you getting treatment from?

A. I believe it was Dr. Bynum at MEA.

Q. Can you spell that doctor's last name?

A. B-Y-N-U-M.

Q. Okay. I just couldn't hear you. Thank you.

And that's the only, I guess, antidepressant type medicine you have taken before 2020?

A. Yes, that I can remember, yes.

Q. Okay. And I think you -- and you took that more in the 2010 to 20 whatever timeframe for physical nerve -- physical pain than depression type issues, right?

A. Yes.

Q. Have you received -- ever received counseling therapy, psychotherapy, any related kind of psychiatric treatment before December 2010{sic}?

A. Yes.

Q. Okay. And tell me about that.

A. As I told you, I had a little girl in June of 2019 and she passed away a day after I had

her. So I went to counseling after that.
Q. Okay.
A. To deal with her death.
Q. Yeah. How long did that course of therapy or treatment last?
A. I would say probably from June to about December.
Q. So 2019?
A. Uh-huh. (Affirmative response.)
Q. Okay. But other than that, and that's obviously understandable with your daughter or child, any other counseling, therapy that you underwent before 2020?
A. Yeah, I can't remember the year -- I want to say maybe 2011, when I was at Vicksburg Intermediate we had a custodian who had a heart attack and the nurse and I had to administer CPR. And PTSD behind that situation.
Q. Yeah. And so you got some counseling, therapy for how long, just a short period of time?
A. Yeah, maybe a few months.
Q. Just because of having seen that and been involved in it with that particular episode?
A. Correct.
Q. Okay. Any other similar treatment that

you've undergone before?
A. Not that I can recall.
Q. Any physical impairments that you have now that would prevent you from being a teacher or administrator?
A. Yes, now I have rheumatoid arthritis.
Q. Okay. And when did you develop that?
A. That was around November of '22.
Q. Okay. And tell me how that affects you.
A. I am still being treated. The progression of the disease is still continuing so I'm just now this week starting my third medication on that. And I also have severe neuropathy in my feet.
Q. Okay.
A. That started around the same time as well.
Q. Okay. And taking medicine for the neuropathy?
A. Yes.
Q. Who's your doctor for the arthritis and neuropathy?
A. Dr. Ivory.
Q. Okay. Where is Dr. Ivory located?
A. She is on Pemberton in Vicksburg,

Mississippi.

Q. And let's just say that either Vicksburg School District or some other school district were to say hey, we have a job opening for assistant principal or principal, would you -- and you got hired for that position, would you be physically able to perform the functions of that job now?

A. I would try. I would love to be able to work again.

Q. Okay. Do you have an expectation with your arthritis as to how long you would physically be able to perform that type of work?

A. I'm assuming once I find a medicine that will work for me that will slow down progression I think I will be okay.

Q. Okay. Any other substantial, physical conditions that you have that might prevent you from performing the role of an assistant principal?

A. No.

Q. And those conditions that you told me about, they've only been present for six months or so, seven months now?

A. More or less. And I did forget one medicine. I'm also on Pristiqu, P-R-I-S-T-I-Q-U.

And that one is actually for anxiety and depression as well. Now, that one -- I've been on that for a while. I'll probably say about a year, a little over a year.

Q. After your termination, but for some lengthy period?

A. Yeah.

Q. Going back into 2022, I assume, somewhere in there you started that medicine?

A. Yeah. Well, I had the counseling back then but -- I really hate taking medicine, but you know, when you're hardheaded you have to -- at some point you have to submit. So I finally ended up taking medicine because life was just too much.

Q. Do you attribute all of the stress to loss of your employment or are there other factors? I mean, it's stressful for me with having young kids. How would you -- would you divvy it up or tell me what you think on that.

A. Honestly, I think the stress of not being able to find a job has probably been the gateway to all these other things that's happened is what I would assume. Because I've never had rheumatoid arthritis before. I've never had, you know, neuropathy in my feet, I've never had that

before. Fibromyalgia, yes. But these others, you know, I've not had that.

Q. All right. Have you told me about all of the psychiatric, psychological counseling type treatment that you've undergone since your termination?

A. Yes, that I can remember, yes.

Q. Are you aware -- other than what may be reflected in some of the documents we have, are you aware of any like written or recorded statements from witnesses about this lawsuit?

A. Written or recorded statements, no.

Q. Again, I know that's a silly -- to you a silly question. You haven't gone out and interviewed a witness or gotten somebody to -- write out this for me, other than what may be -- and I know you've sent me texts. We have the letters. Besides that, you haven't interviewed witnesses on your own, have you?

A. No.

Q. And right now the only -- is it accurate the only source of income you have is from the Good Shepherd?

A. Yes.

Q. Do you anticipate your salary with Good

Shepherd going up over time?

A. No. It's a nonprofit, so no.

Q. Do you have any plans to seek reemployment in a more formal -- I know you're in the schools in a sense now with your current job, but any plans to try to seek reemployment in a school district as an administrator?

A. I may.

Q. And I know the answer to this, but you have not reapplied with Vicksburg since you were terminated, have you?

A. No, sir.

Q. Is there a specific reason you've not done that or you just haven't?

A. I'm just a little afraid of how I'd be treated if I did.

Q. All right. Can we take just like a two-minute break? And I think I'm probably done or very close to being done and then we'll wrap up.

Is that good with you, Keith?

MR. FRENCH: Sure.

(Off the record.)

MR. PEEPLES: I don't have any other questions.

EXAMINATION BY MR. FRENCH:

Q. I've got just a couple of questions.

Ms. Holly, when the doctor or your physician recommended you come back on January 4th, were you physically capable to come back on that day?

A. Yes.

Q. Did you need any restrictions?

A. No.

Q. Were you ever provided a written policy on how you were supposed to request additional leave beyond FMLA?

A. No.

Q. Was it ever verbally explained to you a specific process to request that additional leave?

A. No, sir.

Q. After Ms. Billia Knight sent you an e-mail -- I believe that was December 7th -- that you needed to obtain approval from your principal, did she tell you specifically how you were to obtain that approval?

A. No. It was my understanding you just had to be (unintelligible). So not specifically, no.

Q. You kind of towards the end of your

response there, there was kind of --

A. A lag?

Q. Yeah.

A. No, sir, it was never explained specifically how do you it. You just had to get the approval.

Q. Okay. So what did you think Ms. Knight meant when she just said you need to get your approval from your principal?

A. I assumed just talk to her, talk to her and ask her if she would approve it, which she did. So from there I thought that Ms. Batty would notify central office, as I had already given the paperwork. And I thought that's how that process worked.

Q. Okay. No further questions on my end. I'll pass the witness.

MR. PEEPLES: I don't have anything else. Thank you.

(Time Noted: 10:39 a.m.)

SIGNATURE/NOT WAIVED

ORIGINAL: MR. PEEPLES, ESQ.

COPY: MR. FRENCH, ESQ.

CERTIFICATE OF DEPONENT

DEPONENT: JESSICA HOLLY
DATE: May 17, 2023
CASE STYLE: Holly vs. Vicksburg Warren School District, et al.
ORIGINAL TO: MR. PEEPLES, ESQ.

I, the above-named deponent in the deposition taken in the herein styled and numbered cause, certify that I have examined the deposition taken on the date above as to the correctness thereof, and that after reading said pages, I find them to contain a full and true transcript of the testimony as given by me.

Subject to those corrections listed below, if any, I find the transcript to be the correct testimony I gave at the aforestated time and place.

Page	Line	Comments
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This the _____ day of _____, 2023.

_____
JESSICA HOLLY

State of Mississippi
County of _____

Subscribed and sworn to before me, this the _____ day of _____, 2023.

My Commission Expires:

_____ _____

Notary Public

CERTIFICATE OF COURT REPORTER

I, Robin G. Burwell, Court Reporter and Notary Public, in and for the State of Mississippi, hereby certify that the foregoing contains a true and correct transcript of the testimony of JESSICA HOLLY, as taken by me in the aforementioned matter at the time and place heretofore stated, as taken by stenotype and later reduced to typewritten form under my supervision by means of computer-aided transcription.

I further certify that under the authority vested in me by the State of Mississippi that the witness was placed under oath by me to truthfully answer all questions in the matter.

I further certify that, to the best of my knowledge, I am not in the employ of or related to any party in this matter and have no interest, monetary or otherwise, in the final outcome of this matter.

Witness my signature and seal this the 5th day of June, 2023.

Robin G. Burwell

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My Commission Expires:
April 6, 2025

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY

PLAINTIFF

V. CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

EXHIBIT

F

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND, NANCY BULLARD

DEFENDANTS

DEPOSITION OF LAKEISHA BATTY

Taken at the instance of the Plaintiff via Zoom Teleconference, on Wednesday, May 17, 2023, beginning at 11:05 a.m.

REPORTED BY:

ROBIN G. BURWELL, CCR #1651

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LAKEISHA BATTY,

having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. FRENCH:

Q. Good morning, Ms. Batty, could you please pronounce your name for me?

A. Lakeisha Batty.

Q. My name is Keith French. I represent Ms. Jessica Holly, the plaintiff in this lawsuit. Have you ever been provided -- have you ever provided sworn testimony before?

A. No, sir.

Q. What about a deposition in general?

A. No.

Q. I'm going to be asking you questions, you're going to be answering them under oath. Do you understand that?

A. Yes.

Q. Just a couple of ground rules. I know your attorney has probably already went over a couple of these things with you already, but just as a reminder, there are a few differences between a deposition and a normal conversation. For example, a normal conversation we tend to interrupt each other or talk over each other

inadvertently. But here it's important that we wait for each other to finish asking or answering questions before the other begins talking. Do you understand?

A. Yes.

Q. And, finally, unlike a typical conversation, the answers today are under oath so it subjects you to charges of criminal perjury for giving wilfully false, misleading or incomplete testimony under oath. Will you agree to give me truthful answers today?

A. Yes.

Q. If you misunderstand a question or don't understand it, will you let me know?

A. Yes.

Q. Will you allow me to repeat the question and explain anything that you don't understand?

A. Yes.

Q. Lastly, I really expect this to be kind of a short deposition, but please let me know if you need a break. The only thing that I ask, that you answer a question that I ask before doing so.

Like I said, I want to go through this very quickly. I'm going to start off by asking you a couple of background questions and then

we'll delve into some questions about the lawsuit in particular.

Can you give me your date of birth?

A. 5/13/76.

Q. Where do you live?

A. Vicksburg, Mississippi.

Q. Can you give me your home address?

A. 108 Maple Circle, Vicksburg, Mississippi 39180.

Q. How long have you lived there?

A. Over 20 years, I think.

Q. Are you from Vicksburg?

A. No.

Q. Where are you from originally?

A. St. Louis, Missouri.

Q. And when did you make the move to Vicksburg?

A. After I graduated college.

Q. I'll ask you a couple of questions about college in just a moment. Is there any reason that you can't testify accurately today?

A. No.

Q. Do you understand what this lawsuit is about?

A. I do.

Q. Can you tell me what your general understanding is?

A. Ms. Holly has made a claim of wrongful termination. I don't know if I'm using the correct terminology.

Q. That's fine, just in your words you don't have to spit out any legal jargon. You told me you did attend college. Where did you go to college at?

A. Alcorn State University.

Q. When did you graduate?

A. 1999.

Q. So you would have moved from St. Louis to Alcorn -- I don't know why I'm forgetting the city Alcorn is in. It is notable, but I do forget the name of it?

MR. PEEPLES: Lorman.

Q. (By Mr. French) Lorman, that's right. So you moved there around 1995?

A. That's correct.

Q. And what was your degree in?

A. Health -- biology health science.

Q. Biology health science. Any post-graduate degrees?

A. Yes.

Q. Where did you get your post-graduate degree?
A. I received my master's from Alcorn State University.
Q. What year was that?
A. In 2000.
Q. So you would have gotten your master's directly after graduating; is that correct?
A. Correct.
Q. Do you have any military experience?
A. No.
Q. Any criminal charges on your record -- or convictions, I want to ask?
A. No.
Q. Any other post-graduate degrees besides master's?
A. Yes.
Q. Can you tell me about that?
A. I received my specialist degree from William Carey University in 2018.
Q. You said you received a specialist degree. Can you tell me what discipline that's in?
A. Educational leadership.
Q. Is that a master's in educational

leadership?
A. A master's in secondary education.
Q. Okay. So after you received your master's at Alcorn, did you go to work after school?
A. Yes.
Q. Where did you go?
A. I taught in Madison Parish school system -- Madison Parish school system. It was Tallulah Junior High School.
Q. That's Tallulah, Mississippi?
A. Tallulah, Louisiana.
Q. How long did you work there as a teacher?
A. Six years.
Q. You may have said, my memory is so short, what did you actually teach?
A. Tallulah Junior High School.
Q. What did you teach? I'm sorry.
A. Math.
Q. Okay.
A. Math and science.
Q. What grades?
A. Sixth grade.
Q. After working there for six years, what

was your next place of employment?
A. Vicksburg Warren School District.
Q. What year was that?
A. 2006.
Q. What was your position there?
A. I was a teacher at Grove -- it was at the Grove Street Alternative School teaching -- it was the first year or two, the 9th through 12th grade discipline students, and then the next couple of years after that, I taught the 7th and 8th grade math pre-Algebra.
Q. Okay. Let's go back for a second. Why did you leave the Tallulah School District?
A. My children were becoming of school age and leaving the daycare school range area, and I wanted them in the school system where I lived versus where I was traveling to work.
Q. How far is Tallulah from Vicksburg?
A. A little over 20 miles.
Q. So you were living in Vicksburg while you were working in Tallulah?
A. Yes, sir.
Q. How many children do you have?
A. Two.
Q. Are you married?

A. Yes.
Q. How long have you been married?
A. Since 2001.
Q. What's your husband's -- what's your spouse's name?
A. Kensell(phonetic) Batty.
Q. You sounded unsure, are you married for 22 or 23 years?
A. This is -- gosh. 22 -- we're legal now, so it's 21, about to be 22 years this year.
Q. You said you taught math and science for the alternative school in Vicksburg. How long did you have that position?
A. Came there in '06 and I left in -- I think '11, so I was at the Alternative School from '06 to 2011. And while at the Alternative School, I know the two areas, the grade levels I taught a couple of years there with the high school age, 9th through 12th grade discipline students, all subjects. And then those last couple of years, the pre-Algebra for the 7th and 8th grade.
Q. That was in 2011?
A. Correct.
Q. Where did you go after that?
A. I'm sorry, there was one other role I

did have while at the Alternative School before leaving. I had a role of lead teacher my last or so year there. I came out of the classroom to become lead teacher there.

Q. Okay.

A. In 2011, when I left as lead teacher there, I became lead teacher at Warren Central Intermediate School.

Q. Okay. What was your position at Warren Central Intermediate?

A. Two roles at Warren Central Intermediate, lead teacher and then assistant principal.

Q. A teacher and assistant principal?

A. Lead teacher. And then after the role of lead teacher, I moved up to -- I was promoted to assistant principal. So from 2011 to 2018, I was lead teacher, and 2018, I became assistant principal.

Q. And what were your job duties when you were lead teacher?

A. I was the fixed assets coordinator. I was over the MTSS process. I was a mentor to new and (inaudible) teachers. I was a liaison between -- for parents to school. I was an

instructional coach to the teachers. I worked on the PDIS committee. I handled federal programs. I took care of -- I led the POC meetings and grade level meetings. I helped to coordinate the family nights and monthly family engagement community events that we had at the school, among other things.

Q. Okay. And you mentioned fixed asset coordinator. Can you explain to me a little bit what fixed assets are and what specifically you did in that role?

A. As the fixed asset coordinator I was responsible for maintaining -- I guess keeping up with the equipment in the building that was bar coded, equipment being -- it could be furniture that had been bar coded or computer equipment. I don't know how to explain that other than --

Q. I get it. What about MTSS? What does that stand for?

A. That's the multi-tier support systems. It's our instructional support systems for struggling learners. And it's a continuum of services that are provided and offered to children based on their instructional needs.

So as the leader of that committee, you

convene a committee and discuss what -- what are the child's current challenges and prescribe the necessary supports they need to perform academically or behaviorally.

Q. I think you said something about federal programs. What was your role with federal programs in the school?

A. So federal programs. Again, I also dealt within instruction, core instruction, any federal dollars that were assigned to our school, and I supported the principal and how those funds were spent towards instruction, be it instructional supplies or support services for students, as well as support services and professional development for teachers.

Q. Okay. You got your specialist degree in 2018, and that's when you became assistant principal. And that was the Warren Central Intermediate School, too?

A. Correct.

Q. How long were you working as assistant principal for that school?

A. Until 2020.

Q. 2018 to 2020?

A. Correct.

Q. What were your job duties as the assistant principal?
A. I pretty much maintained the roles that I had as a lead teacher. There were some things added on to that as it relates to discipline, textbook inventory. Yeah, I think those are the major things that I can recall that were added on.
Q. Who was your immediate supervisor at the time?
A. Tonya Magee.
Q. She was the principal?
A. Correct.
Q. After you worked as the assistant principal, what was your next position or your next job?
A. Principal at Vicksburg Intermediate School.
Q. That was in 2020?
A. Correct.
Q. What were your job duties as principal? A lot?
A. Yes, a lot. A lot more -- same things that I had as lead teacher and assistant principal, now add on personnel, supervising personnel directly, budgets, maintenance of the

school building, operation -- school operations, family and community engagements, climate and culture of the school.

Q. Do you still have that position today?

A. Yes.

Q. This is your third school year; is that correct?

A. Correct.

Q. And did you start around the same time as COVID; is that correct?

A. Correct.

Q. Okay. As a principal, how do you receive evaluations?

A. Can you clarify what you mean by "receive"?

Q. Do you get any sort of performance evaluations as a principal?

A. I do. I have a portfolio. I have the portfolio that I submit and discuss with my superior. And they're rather informal.

Q. Who's your superior?

A. The superintendent.

Q. What's his or her name?

A. Well, right now we have an interim superintendent, Mr. David Campbell.

Q. When you first received the position in 2020, who was your immediate supervisor?
A. Chad Shealy.
Q. Okay. And you briefly mentioned you would have an informal discussion about your work performance; is that correct?
A. Correct.
Q. How many discussions, if you can recall, did you have with Superintendent Shealy?
A. I can't recall an exact number.
Q. Okay. Were they -- how many in a year, if you could remember, that you would have?
A. One when we would go over my plan, my instructional plan for the year. Mr. -- I'm sorry, I may have interchanged those words between instructional plan or a strategic plan. I just wanted to clarify that. I sometimes get those -- interchange those words, but they are the same document that we use. It is the same document.
Q. So roughly about once a year you guys would have these conversations?
A. Correct.
Q. All right. And were these ever documented in your portfolio?
A. Not to my knowledge. I'm not sure.

Q. Who would know the answer to that question?
A. I'm not sure.
Q. Would the superintendent have those records?
A. I'm not sure.
Q. In the past as an assistant principal, would you sort of have the same sort of discussions about your work performance, just informal discussions?
A. Correct.
Q. And who would those discussions be with?
A. My principal.
Q. Okay. Who was the principal at the time -- you already told me that. Do you know if those conversations would have been documented?
A. I'm not sure.
Q. To your knowledge, have you ever received any sort of negative reviews that would have been in your file?
A. Not to my knowledge.
Q. What about as a teacher with the School District?
A. No, not to my knowledge.
Q. Is there anybody who supervises you

other than the superintendent?

A. Deputy superintendent, who is now our interim superintendent, David Campbell.

Q. You said David Campbell?

A. Correct.

Q. Anybody else besides Mr. Campbell?

A. I want to make sure I'm understanding your question. In the spirit of following the rules that have been established here, if I'm understanding you correctly, we have a chain of command, if that's what you're asking.

Q. Okay. So what's -- and I'm not trying to trip you up or anything. I'm just looking for clarity. I don't have anything in mind specifically. So I'll ask you it in that way. After you, as the principal of the school, what's the chain of command above you?

A. The next level would be the -- it depends on the individual. If it's something I'm initiating, my go-to person next level would be Mr. Campbell, depending on what the situation is. If it's something that falls under the purview that we are to report directly to Mr. Campbell. If it's something that falls under the associate superintendent's purview, then we report it to

that person. So it just kind of depends on what the -- what the situation is as to which -- who we would report to. If that makes any sense.

Q. So the situation is a termination, for example, what would be the chain of command? In your school, what would be the chain of command as far as how that decision is made?

A. So, if there's something related when it comes to termination, personnel is what comes to mind. That's the term we use. I would make contact with have -- or have a conversation with the deputy superintendent and director of personnel.

Q. Who was the director of personnel at the time of Ms. Holly's termination?

A. Dr. Little.

Q. Is that Lennie Little?

A. Correct.

Q. Okay. How long were you Ms. Holly's direct supervisor?

A. I started in July 1 -- officially July 1 of 2020, and she began shortly thereafter in July of 2020.

Q. Did you know her before you all started working together as principals?

A. Professionally as someone who worked in the District, worked at other schools in the District, yes. Not really on a personal level.

Q. You knew of her but not a lot of interaction; is that correct?

A. Correct.

Q. And how long had you known of her?

A. I can't recall the specific number, per se. I know I would say at least three years.

Q. In your current role as principal, do you receive any training on FMLA? And by FMLA I mean Family Medical Leave Act.

A. Repeat the question.

Q. Do you receive any training in your role as principal on compliance with Family Medical Leave Act, FMLA?

A. Do you mean in my training from college coursework or --

Q. No. It could be employer training by the District?

A. We had, I guess, many PDs at the beginning of the year when we have our retreat, the administrative retreat. And we'll get a brief overview of, you know, forms or paperwork that may have to be submitted if someone does have to go

out on FMLA.

Q. You said PDs, what's a PD?

A. Professional development.

Q. And that would happen once a year on a retreat for the leadership team; is that correct?

A. Give or take, yes, sir.

Q. How long were these retreats?

A. One to two days.

Q. And these are, like, day-long trainings?

A. It's training meeting where at the beginning of the school year the leadership team meets with the superintendent and all of the different department heads, you know, share out important information with the principals and directors, give us updates on if there's any changes or any protocols that we are to follow, things of that nature. We'll get our charge and, you know, the -- if there is a theme or a charge for the year. It's kind of an opening of the school year, so to speak, that the superintendent will have with his district leaders to open up the school year. And over the course of those two days, different people may come in or presenters may come into present whatever topics have been planned for us. And then, of course, there will

be time for the directors also to give their spiel on any updates.

Q. One of those speakers might cover the topic of FMLA?

A. Yes, sir.

Q. And you said you were given forms as well as part of your training on the topic of FMLA; is that correct?

A. Yes, and if I can -- if I'm remembering correctly, like this year, we would receive, you know, just a snippet on, you know, what -- what forms are to be used, if there is, like, an electronic form versus a paper form, you know, they would go over that information, what has to be completed, and what contact person we should direct people to if there is a need for them to utilize or start the FMLA process.

Q. Okay. And within your school, who is the contact person to start an FMLA process?

A. Yes. So the -- when the teachers come to me with that, I will let them know that they need to make sure they reach out to Ms. Billia Knight at central office.

Q. Okay. What about training under Americans with Disabilities Act, is that also

covered in those retreats?

A. If my memory is correct for this year, I do recall us going over that as well briefly.

Q. What about back in 2020 when you first started?

A. I can't recall back then. I'm sorry.

Q. Would you have the paperwork if they gave you any, would you still have the paperwork from 2020?

A. I don't think so. I don't think I do.

Q. Who is the point of contact for the Americans with Disabilities Act?

A. Billia Knight.

Q. Same person?

A. That's my same go-to person. Whenever I have -- someone comes to me with those questions, I refer them to Billia Knight for the sake of staying in my lane of what I'm responsible for duty wise. I don't dip over into that area on questions I can't fully explain to them. I refer them to Ms. Billia Knight in central office.

Q. Understood. Have you discussed this lawsuit with anybody other than Mr. Peeples?

A. No.

Q. Do you remember why Ms. Holly was

terminated?

A. For not returning back to work.

Q. Do you remember any details about exactly what happened?

A. What I do remember is she did not return back to work when -- I guess when she was supposed to come back. And so that's the kind of gist. It's been a couple of years now.

Q. I understand. Tell me from your own memory. That's all you remember, that's quite all right. We'll go through some documentation and kind of refresh your memory if necessary. There's some e-mails I want to start and show you. Bear with me. I'm about to try to share my screen. Can you see the screen?

A. Let me put my glasses on. That's a bit small.

Q. It's small? Is that better?

A. Yes, sir.

Q. Okay. Let me try to expand it a little bit. I don't know if my screen is looking the same as you-all's.

MR. PEEPLES: I think when you say that -- you don't really see it like we see it when you share?

MR. FRENCH: Yeah, clearly.

Q. (By Mr. French) Ms. Batty, just let me know if anything is off while I'm going through these e-mails. They're not just e-mails, there's some documents related to the missed days of Ms. Holly. And these documents are labeled as VWSD00001-VWSD000017.

Here's one e-mail -- let me go to VWSD000012. This is it. This is an October 30th, 2020 e-mail sent by Ms. Jessica Holly to Billia Knight. Can you take a moment to review this e-mail?

A. Yes, sir.

Q. Do you recall ever reviewing this e-mail?

A. No, sir.

Q. Does this e-mail kind of refresh your recollection about some of the issues with her missed work days?

A. Very little. In response to your question, very little.

Q. In this e-mail it looks like Ms. Holly is informing the district via Billia Knight that her doctor has recommended she get additional leave beyond FMLA due to her disability. Is that

an accurate description of what you read?
A. That is what I read.
Q. Around this time October 30th, 2020, did Ms. Knight inform you of Ms. Holly's doctors recommendation that she be provided these additional leave days past FMLA?
A. Not that I recall.
Q. Did anybody else inform you of this?
A. Not that I recall.
Q. At what point did you learn about this specific request for additional leave?
A. I can't recall the exact dates. I do remember about the time that it was time for Ms. Holly to come back she gave me a call one evening to let me know. She said that her doctor said she needed to stay out -- at her doctor's request she needed to be out longer and that she would not be returning back until January.
Q. Do you remember when you received that voicemail?
A. That was not a voicemail.
Q. I'm sorry. You guys had an actual conversation?
A. Yes, she called me.
Q. When was that call?

A. I can't remember the date. I know it was well after hours.

Q. Well after hours? Was it before she was actually terminated? I'm assuming it was.

A. Yes.

Q. Do you know how long before she was actually terminated?

A. I want to say, like, within days of when she was supposed to return.

Q. It was days before she was supposed to return?

A. Again, I cannot recall the actual date. What I do remember it was close to when she was supposed to return back to work.

Q. Without giving you an actual date, you said it was close to the date she was supposed to return. So does that mean she called you before the day she was supposed to return?

A. Yes.

Q. Do you recall the details of that conversation?

A. What I remember was she told me she was not coming back to work until after January at the request of her doctor. I'm paraphrasing there, but I do specifically remember -- I remember

saying to myself, you know, who am I to second guess what a doctor says. You know, a doctor says she needs to take more days, my only response was okay. And then I went into having a conversation asking about, you know, how the baby is doing, how she was doing, you know that conversation. Because we really had not talked at all since then, since leaving to go from her baby shower. She came for a baby shower, and after that, we had not talked at all. She sent me a text -- when the baby was born, she sent me a text of a picture -- either a text or an e-mail picture of the baby, and I replied, you know, congratulations. And outside of that, we had not had any conversation until she called me back to say my doctor said -- you know, I had some complications. I cannot come back to work. So that was the extent of the conversation. Again, you know, just checking in on her and baby, that kind of conversation. We really didn't talk much about the job and the work part. We spent the bulk of our time talking about, you know, the baby.

Q. Did she actually tell you that she would miss -- well, that she would be coming back on January 4th?

A. She did say January. I can't recall if it was the 4th, but I do remember a January date in that conversation.

Q. You said your thoughts were kind of like, you know, who am I to go against the doctor. Were you okay with that recommendation?

A. That's typically my response whenever someone -- I know from our FMLA training, I don't ask -- I don't ask them, you know, the specifics. I just listen for what they tell me so I don't question. I make sure not to question. That's where that -- when I made that statement. I don't question because I know we can't ask them the specifics of what's wrong with them, so I don't do that. So I just asked, you know, how's the baby, you know, what's the baby's name, how much the baby weigh, you know, those kind of conversations. We talk about things like that.

Q. After that conversation where she informed you of the new date her doctor recommended she return to work, did you share this information with anybody in the District afterwards?

A. I can't recall if I did talk with anyone else in the District. And when you say

"District," are you meaning at the District office?

Q. At the District office, the superintendent, or Billia Knight, who is kind of over that sort of thing, right?

A. That's correct. Billia is over this. No.

Q. So the next time you actually dealt with this decision was when she was terminated?

A. Correct.

Q. And going back to the e-mail, she said she would return on January 4th. Would this mean that she would have missed the last week before Christmas -- before Christmas break?

A. Yes.

Q. So January 4th, she would have come back after Christmas break when classes start; is that correct?

A. Based on the e-mail, yes.

Q. Do you think it would have been difficult to accommodate that request?

A. As a new principal, first-year principal, it -- it had been challenging. It had been challenging without the support, being short staffed. It was a challenge getting through those

first couple of months without having the support that I needed. It was a challenge.

Q. Are you specifically saying that it was challenging that she missed all of those days, those FMLA days?

A. No, it was challenging not having someone in the role of that job to carry out the duties and picking up the slack there. It was a challenge. So...

Q. Yeah, that's what I'm asking because, you know, she missed -- I can't remember the amount of days she missed, do you? Do you remember how much time she missed that school year?

A. I don't know the exact days.

Q. At the time she wasn't around, are you saying it's challenging because the assistant principal wasn't there?

A. It was challenging because the duties that reside with that office, there was no one left to do those but me.

Q. And so I guess my next question is, you know, since it was challenging that, you know, she wasn't there and you had to do all those duties, I'm asking during that week, that extra week that

she was asking to take it off for that last Christmas -- during that -- scratch that.

During that last week before Christmas break, did that add any extra challenges for you, so to speak?

A. No more than what I was already experiencing.

Q. I'm asking you specifically about that timeframe when she was requesting off because I -- you know, when I was in school just a couple of years ago, we didn't receive much instruction the last week before Christmas break. Is that kind of a similar thing with the school?

A. Not under my leadership.

Q. So what kind of things would you be depending on her to do before -- the week before Christmas break?

A. Ensure that instruction is still going on. It's not customary for us to just babysit. We don't just pop in movies for students to watch here. That's not customary here.

Q. So her normal duties -- I'm sorry. I cut you off.

A. Since I've been here, it's been clearly -- we teach bell to bell, and so we are in

classrooms observing, providing support to teachers, providing support to students. In addition --

Q. I'm sorry, I cut you've again. I'm sorry.

A. In addition to the -- you know, the other duties that we already have, if I have to come out to handle discipline with behavior, if I have to step out to take a parent complaint or a parent meeting, you know, those -- the day doesn't stop for us. We are here -- we're in teaching and learning, and so that has been the focus since we come in and it's still the focus. And it takes a full team to ensure that if we're trying to grow.

Q. During that week before Christmas break are you guys in testing?

A. Some classes are in testing, some classes are not. It just depends on if it's your date for testing. We have a testing schedule.

Q. During that conversation that you had with Ms. Holly about her request for additional days, did you express any sort of disproval about her getting those additional days?

A. A request was not made for additional days. I was just told her doctor said she had to

be off, and my response was, okay, make sure have a conversation with Billia Knight.

Q. So did you ever say anything to her to the effect that you would be opposed to her getting those additional days?

A. No.

Q. Let me go to another e-mail. You can still see my screen, right?

A. Yes.

Q. This is December 7, 2020 e-mail where Ms. Knight is responding to the previous e-mail on October 20th that we just looked at. In the e-mail, she tells Ms. Holly that she would need to get her principal's approval for the additional days. Do you see where she says that?

A. Yes.

Q. Do you remember this e-mail at all?

A. I do not. I don't recall that.

Q. You don't recall seeing this before that conversation you had with Ms. Holly days before her termination?

A. It's been a while. The e-mail says I have a copy of it, but I just at this moment can't recall reading over this that long ago.

Q. That's the reason why I asked you

because I see that you're copied and Dr. Little is copied. Do you -- do you disagree that you received this e-mail on December 2nd -- 7th?

A. Based on what's in the e-mail, I don't.

Q. You just can't remember whether or not you actually read it or not?

A. I can't recall. I would need to go back and check in my e-mail box to see.

Q. Do you remember this actual e-mail, do you remember Billia Knight or anybody else notifying you that Jessica Holly had made the request in October?

A. No. It's been so long. Some things I can kind of remember, some not so much. What I do remember is this, I remember talking with her when she called me about not being -- her doctor said that she had to stay out longer and she wouldn't be able to come back until January. I had not had a conversation with her after then. She had not reached out to me after then. I had not reached back out to her after then. That's pretty much what I can remember.

Q. Do you remember an EEOC investigation over this matter of her termination?

A. Would I have been involved in that?

Q. That was going to be my next question. Did anybody interview you about her allegations, like in 2021?

A. Outside of speaking to our District attorneys -- our school District's -- the School's attorneys, I hadn't had a conversation with anyone out -- any other entity or organization. I hope I'm using the right terminology there or you get what I'm saying. A person that came to me to talk to me about this, other than the attorney.

Q. Okay. I'm not going to ask you about any of the statements or discussions you had with your attorney. Do you remember making any statements to someone other than your attorney that you were never notified that Ms. Holly wanted the additional days?

A. I don't remember any -- are you asking still about the EEOC part?

Q. Not necessarily, just in general during this timeframe from, you know, October 2020 until now, you know, have you ever told anybody that you were never notified that she wanted the additional days.

A. I can't recall. I'm trying to think. I don't remember anyone other than the attorneys

coming to see me about this.

Q. That's fine. We can move past that. If you don't remember, you don't remember. Let me ask you this: Under the district's policy, is it your understanding that you have any duty to make decisions regarding leave approval for employees once you're notified?

A. Can you restate the question?

Q. So in that e-mail you see where Billia Knight is saying that the days that Ms. Holly is requesting for additional leave must be approved by the principal. Is that your understanding that you are the person who must approve additional days after FMLA is exhausted?

A. It is my understanding now after reading this, yes.

Q. Okay. So I guess the appropriate question is at the time that all of this was going on, you know, October and December of 2020, did you know that Ms. Holly needed your approval to get the additional days of leave?

A. No.

Q. Okay. When you had this discussion with Ms. Holly, do you ever recall telling her that she needed to get with Ms. Knight to request those

days off?

A. To answer your question, I do remember telling her to get with Ms. Knight, but not necessarily in reference to getting days off and that specific language. When she told me that her doctor said she needed to be off until January, tell her to make sure she gets with Billia Knight.

Q. So what did you mean when you told her to get with Billia Knight?

A. Anytime it's dealing with FMLA, I always refer them back to Billia Knight given that I don't know all the specifics that goes with that. I don't work in FMLA on a daily basis. I know the surface-level knowledge of what I'm supposed to handle from the building level. Anything, you know, further beyond that, I always refer them back to the person who can give them the specifics and set them on the right course of action, which is Ms. Billia Knight or her friends in that department.

Q. So at this specific time, what did you expect for Ms. Holly to do to get those days approved that she was requesting?

A. To go through -- the language that we use at central office, to go through central

office, and that being Billia Knight's office, to get guidance on what her next steps would be. And I was expecting to wait to hear back from Billia's office as well to let me know that they would be out. Because that's our protocol. The personnel doesn't necessarily tell me how long they're going to be out unless they want to offer that up to me. I usually wait to receive a notification from central office that, you know -- if I can give an example here -- you know, Mickey Mouse is going to be out for XY days and they are expected to return on such-and-such date. I may receive communication like that. So I wait until I receive that notification.

Given, you know, the everyday hustle and bustle of the day, just trying to get through the day, I don't, you know, just stand by looking, I guess, intently for a notification. I would not follow my schedule at the time of day when I check my e-mail. I see it, you know, I'll get abreast then and make myself a little notation there or, you know, a mental note, hey, so-and-so or Mickey Mouse is going to be coming back at this day.

But I -- I don't give specific guidance to the FMLA procedures. I always refer it back to

Billia Knight or central office. Like I mentioned earlier, I use those terms of school plan or strategic plan interchangeably. Same thing with Billia Knight and central office.

Q. I can imagine your job is kind of like mine as an attorney. Is it fair to say that you get a ton of e-mails each and everyday?

A. I'm sorry. Yes, sir, I probably get about a 100 an hour.

Q. I got it. During that time, December 7, 2022, I was working at a big law firm at the time, and we were already -- I think we were prepping to get out. Were you guys preparing to be virtual at this time?

A. In December?

Q. In December 7, 2020?

A. December 2020, we were not 100 percent virtual.

Q. Okay.

A. We were, I guess, what the -- I guess modern population in America would call hybrid, although we didn't necessarily use that actual term in our district. We had some students who were 100 percent in the building and the parents had an option if they wanted their child to be at

home virtually they -- we had that option as well during that -- that was my first year as principal and we were just coming -- we were still in the heat of COVID. So some of our students were here in the building and some of our students were at home virtually.

Q. What about employees, were some of them at home virtual?

A. No, 100 percent of them were at work.

Q. Did you at any time -- the staff at anytime go virtual?

A. Not during this particular school year in my role as principal. If we're speaking to the December -- still talking about the December timeframe, no, we did not.

Q. What about a different timeframe, did they -- did you ever go virtual at anytime?

A. Back in March when everything first hit around the world, March of '20. That's before I became principal.

Q. When you started all of staff were at the school; is that correct?

A. Correct.

Q. Were there any teachers or staff who had accommodations to work virtually during that time?

A. No, sir.
Q. What about, you know, at anytime up until now, anybody work virtually?
A. No, sir.
Q. You said with respect to leave you usually wait to get the notification that, for example, Mickey Mouse will come on a certain date. Did you ever get that notification from Billia Knight about Ms. Holly?
A. I would have to go back and check my e-mails and refresh my memory of when I received.
Q. If you could do that after our deposition, that would be great and share with Attorney Peeples so he can give it to me.
I guess my next question is, is it your understanding that if an employee has used up FMLA leave that they can still get additional leave?
A. That was not my initial understanding of FMLA.
Q. I'm just asking is it possible to get additional leave after you use up your FMLA? Like, for example, under the ADA, the Americans with Disabilities Act?
MR. PEEPLES: I'm going to let her answer, but I'm going to object to the extent it

calls for a legal conclusion.

You can answer, Ms. Batty, if you know.

Q. (By Mr. French) Let me clarify. I only used the Americans with Disability Act as an example. My question is as far as you know under the District's policy, are you allowed to have additional leave once FMLA is used up?

A. My understanding is FMLA only allows for a certain amount of days. If it's something beyond that, then it's my understanding it's a different category, it's no longer FMLA, it's -- from my understanding. I thought you asked specifically FMLA.

Q. You answered my question. I guess my followup, is it possible under the District's policy to have any additional leave under a different category than FMLA?

A. And I would have to refer back to the policy to thoroughly answer that question. Again, my apologies for not knowing it like the back of hand.

Q. That's fine. Before her termination, did you ever have to take any disciplinary action against Ms. Holly?

A. No, sir.

Q. When you were working with her, were there any performance issues with her?

A. I wouldn't necessarily say performance, per se. Are you referencing -- can you give me -- what do you mean by performance?

Q. How does she do her work?

A. In all fairness, you know, she wasn't here very long with me. We started -- I started July 1, she started a couple of weeks after me, maybe mid July. From her start date, you know, she was kind of in and out there from work here or there, so we really didn't work together very long for me to do a complete performance evaluation, if that's what you're asking. If you're asking about certain tasks that may have needed some support, you know, after -- if I had to proof over something like that, you know, even I submit my documents to someone on my team to proof over before I push them out to the public or anything. I've done some things like that with Ms. Holly, you know, beginning of the year documents that we have to prepare before we're going out. We really hadn't worked together very long to do a performance appraisal, so to speak.

Q. So in terms of whether she did very

well, poorly at her job, you didn't have enough interaction with her in your position to really know; is that accurate?

A. That's accurate.

Q. Okay. Do you have any insight as to her reputation at the time that you were working with her.

A. I know that she had been principal -- I'm sorry, assistant principal for quite a few years. I do know that. That's my knowledge of her working here. I'm not sure if she worked in other districts, but I do know she's been a teacher here in this district and she's been an assistant principal in this District.

Q. Okay. So do you have any insight about -- or have heard anything about, you know, how well she did her job? I'm just talking about at the time you were her principal.

A. At the time where?

Q. You were her principal. I guess what I'm really asking, did you have any sort of opinion of her before you even started working with her?

A. No.

Q. Do you recall how many years she had

worked with the District?

A. Not specifically a number. I do recall that when I was a teacher at the Alternative School, I want to say she was at the high school maybe a teacher. Because we would -- she would have to send some assignments over for students that I had at the Alternative School. So I knew -- that was my knowledge of her. I would get the inter-office mail and it would have, you know, what teacher it came from. I do recall that.

Q. So it's fair to say that you knew that she had worked there for at least over a decade, maybe?

A. Yes.

Q. Do you find that sort of experience valuable to the school?

A. I do.

Q. You already told me why Ms. Holly was terminated, I believe. And I think you stated because she didn't show up back to work on her return date December 14th. But now having heard you say that you had a phone conversation with her and she told you that her doctor said that she should come back January 4th. I guess my follow-up question is to ask why did you make the

decision to terminate her for not showing up on December 14th?

MR. PEEPLES: Object to that question. I don't think it's been established that Ms. Batty made that decision.

But you can answer, Ms. Batty.

Q. (By Mr. French) Okay. Well, let me scratch that question real quick, Ms. Batty.

Did you make the decision to terminate her?

A. Principals are not -- we don't terminate. We make recommendations to hire. We don't -- the board -- the School Board -- from my understanding, the School Board does the official hiring and firing. We make the recommendations to hire.

Q. So made a recommendation to terminate her, is that accurate?

A. Yes.

Q. Can you explain to me how you made that recommendation?

A. I needed help. I needed someone that was going to be at work to help me with my duties here at school.

Q. Okay. So is it fair to say you

terminated her because she couldn't -- because you believe she couldn't actually do the work?

A. I didn't terminate her.

Q. I'm sorry for using that terminology. Recommended to terminate her. I'm just asking you why you recommended to the board to terminate her for not coming to work on December 14th when you knew that her doctor recommended not to return until January 4th. Just take me to why you made that decision?

A. I needed someone that was going to be at work. I needed help. I had gone pretty much -- again, I started in July, she had already been out quite a few days there, so many days that I couldn't even give a fair assessment performance. And so we need -- I need someone that was going to be at work. And her not coming to work, that's going to put me in a situation where I'm still playing catch-up. If our goal is to grow students and teach, I need someone that's going to help me teach, coach the teachers, help teach the children, carry out the duties of the day. And not coming to work, I need help.

Q. She did say that she was coming on January 4th after the Christmas break. That's

correct?

A. That's what -- she said her doctor said that she could return in January. I can't recall, again, if that was the date, but she did say in her conversation that her doctor said she needed to remain out until that January -- until January.

Q. Okay. So why couldn't you wait until the date when classes began after the Christmas break to see if she would come back to work?

A. I don't know how else to answer that.

Q. Are you saying you don't have an explanation for it? I'm asking because there was -- she asked for a week, the week before Christmas break. I hear what you're saying, you needed somebody that was there. Well, she's telling you she's coming right after the Christmas break. Why couldn't you just wait until then to see if she could come to work?

A. Again, I just gave you my explanation that I needed someone that was going to be there to help. And she -- again, looking at the days we had been in school already or at work, she had not really been there to work or to help.

Q. When you made the recommendation to the Board, how did you do that? Did you write to

them, did you e-mail them, did you call somebody? How was that done?

A. I can't recall now that you've asked the question. I can't remember exactly if I made a call or what. I would have to go back and look to see if I sent an e-mail. I don't know. I can't recall at this moment.

Q. Do you remember when you would have made your recommendation? Just to refresh your memory, she came back -- the day she was supposed to come back was December the 14th. She received a notice December 17th, 2020. So do you remember when you actually made the decision?

A. I can't remember specifically. I can't remember the specific date.

Q. If you could find or go search to see if you did send an e-mail or write a letter to the School Board, that might give us some indication so that would help -- I guess I would ask what typically do you -- when you give a recommendation to make a hiring or firing decision, is that typically written in an e-mail or a letter of some form? Can you explain that to me?

A. Typically, if it's a request for a separation, there's a form that we have them to

fill out. That's the procedure that I will fill out -- it's the green separation form.

Q. It might just not be dawning on me right now, I may have that form. But I'll get with Mr. Peoples and we'll see about that.

So you said there is a green form that you would fill out yourself; is that correct?

A. Yes.

Q. And would you have to write an explanation or is some -- is it something that you do -- let me just ask -- let me break up those questions.

Would you have to write any explanation about the reasons as to why she should be terminated?

A. She being Ms. Holly?

Q. Right.

A. I can't remember if I completed one of those or what process we used.

Q. When you do complete these forms, is it a fillable form where you just check off boxes, terminated for missing work?

A. It's -- it has options on there for you to check off what the separation is for. It has an option for resignation -- well, all of it, of

course, is separation but you check off in what manner is the separation for. And you check off which one it is. And then if you have some supporting documentation, for example, if someone is resigning and they submit a letter of resignation, you would attach that to it.

Q. So would you write -- just to be clear, would you write, for example, a narrative statement about your reasons for going to hire or fire somebody?

A. If it were a nonrenewal of contract, then, yes, I would put on there -- check the nonrenewal or give us -- if it's other. If you select other -- there is a selection for other, you would select other and then provide a statement there or attach a statement, yes.

Q. And once you submit that form -- well, typically -- I'm not talking about Ms. Holly. But typically, who do you submit that form to?

A. To Dr. Little's office, the director of personnel.

Q. Okay. After that, do you do anything else, I guess, to facilitate the decision? For example, do you have to present in front of the Board at a meeting to explain why you -- why you

recommend the termination?

A. No, sir.

Q. Once you fill out that form, you turn it in to Dr. Little, your job is done?

A. Unless -- again, if -- I've not had an experience in this role where I've had to move in that direction or go before or make a presentation. That has not been my experience.

Q. Have you terminated anybody else other than Ms. Holly?

While you're thinking, let me rephrase that. Have you recommend a termination for anybody else other than Ms. Holly?

A. Yes.

Q. Do you remember why you recommended that termination?

A. Yes.

Q. What was it for?

A. Job performance.

Q. Was this a teacher?

A. No.

Q. Was it someone in administration?

A. No.

Q. Okay. What was their position?

A. Secretary.

Q. Your secretary?
A. Yes.
Q. Okay. Around what time did you make this recommendation, do you remember?
A. A couple of weeks ago.
Q. Can you tell me the process you did for this individual?
A. Yes, I collected the -- got the green form, completed the green form and attached to it the copies of the reprimand letters with regard to the job performance and submitted that via e-mail to the office of director of personnel, HR, Dr. Little's office.
Q. At that point, did you do anything else to facilitate that decision?
A. No, I just have to wait before it goes through the process, I believe, of going through Board approval.
Q. Okay. Do you know or can you describe that process?
A. I'm assuming that it goes -- when it goes on the board docs for the next board meeting coming up this month, so I don't know the full -- I haven't finished the whole process yet. Again, this is still new for me. I haven't gone beyond

this step. Submitting it to HR, and I know the next step is it has to be Board approved.

Q. Your understanding is that you'll wait to see if the Board will approve?

A. Correct, will approve or disapprove.

Q. Okay. Once they do that, what steps do you take?

A. I wait to hear back from HR.

Q. Okay. At that point do you ever contact yourself or notify the person being -- you recommended to terminate?

A. I'll know once we finish this process.

Q. You're saying that you don't -- let me ask you this: Would it be your duty or do you not know? Would it be your duty to notify the person once the Board has made a decision about their employment?

A. I don't know.

Q. Is the secretary the only other person you terminated other than Ms. Holly since you've been there?

A. I haven't terminated her, but made the recommendation.

Q. Right. Have you made any other recommendations other than Ms. Holly and this

other person we just discussed?

A. That's all I recall at the moment. I would have to go back and check my notes.

Q. Did you ever discuss the possibility of recommending termination of Ms. Holly to anybody before you made your recommendation?

A. I don't recall doing that, no, sir.

Q. Okay. Is that a no or you don't remember? I saw you shaking your head for our court reporter. Is that a no?

A. I don't recall.

Q. Do you recall whether you ever complained that you don't have the help you need to anybody because of the days she missed work?

A. I don't really complain, so to speak. I actually enjoy what I do. I know it can get challenging and hard sometimes, but I don't think I complain.

Q. I really shouldn't have used that word. It sounds like I'm criticizing you when I'm not. I talk about getting too much work on my plate by myself all the time.

I should ask you, do you recall ever discussing with anybody how the work for you is getting, I guess, backed up because Ms. Holly was

unable to come to work?

A. I don't recall it making us -- recall making a statement in that regard to -- with Holly. I may have reached out, let's say, to curriculum, saying, hey, can you send someone over to help me with observations.

Q. You wouldn't have specifically mentioned her to anybody about how difficult everything was?

A. I don't recall that, no, sir. I know I do -- I do know that, and even, you know, I will ask him, can you send someone to help me with observations, or can you send someone to help me, you know, with the inventory, things like that.

Q. Who would that person be that you would request that sort of assistance from? When you say curriculum, who was that?

A. Dr. O'Harroll.

Q. Okay. Can you give his or her full name?

A. Dr. Phatasis O'Harroll.

Q. What's their official title?

A. I believe it's the director of curriculum and instruction.

Q. Okay. Do you remember ever giving a warning to Ms. Holly that you would be

recommending that she be terminated if she didn't show up immediately after her FMLA expired?

A. No, we only talked when she called to tell me about the doctor said that she needed to stay out longer and come back in January.

Q. Okay. So before you made the decision to -- before you made the recommendation, you didn't notify Ms. Holly at all what was about to take place?

A. No, sir.

Q. Okay. And I think you already said this before but you knew she was out of on FMLA leave due to pregnancy, right?

A. And I want to answer this as truthfully as possible. I don't want to assume that -- I know as a woman you go out on maternity. Sometimes we just assume that people will fill out the FMLA paperwork. So I was -- I don't know if I'm making the assumption before I actually received notification that she had already done it because she had not communicated any parts of her completing the paperwork and turning that in to me. We never had those conversations. I did know that at some point -- of course, I knew she was with child and that she would be going on

maternity leave.

Q. Okay.

A. But I was not -- we never had a conversation between each other of, you know, when she would start completing the paperwork. I did make the assumption, of course, that at some point, you know, it would be done and, again, just as a woman I think -- I've gone through that process before so I just made that assumption.

Q. So you don't recall ever getting a notification from Billia Knight that she completed her paperwork for FMLA?

A. I don't recall. I would have to go back and check, refer back to my e-mails.

Q. When she didn't show up on December 14th, 2020, how did you learn about it?

A. I don't remember that specific day.

Q. Okay.

A. I know my routine that I follow that day. I know what I typically do on a day. When I get to work, I go around the building to say good morning to everyone so I can put my eyes on everybody to know who's here. I know that was my normal routine. I can not specifically remember what happened on December 14.

Q. So typically if someone is absent from work, how would you discover that?

A. When I go around to do my duty post -- my routine, I go around to say hello to everyone in the morning, good morning, and that's when I take note of who's here, who's not and to verify my routine, my route going through the building. When I make it back downstairs to the sign-in sheet, I look to see who has not signed in.

Q. Does that sign-in sheet let you know that whether a person is there or not because of leave?

A. No, it just let's me know whether or not they are in -- well, it let's me know if they are in the building or not. I guess for us -- if someone is not here I know that they have taken personal leave or sick leave. I know what kind of leave they're out for if they're absent. And I know who's in the building, because like I said, that's my routine. I go around, say good morning to everybody, and while I'm speaking I'm taking a mental note who's here, who's not. So by the time I make it back down on my routine, I check it with the book to see who has not signed in. That kind of helps me confirm who's here or who may have

forgotten to sign in because I physically put my eyes on them.

Q. Okay. If a person -- you notice a person has not signed in, do you typically contact that person?

A. If they have not signed in and I did not see them, then, yes, I will -- if they are on -- if I'm expecting them to be there and -- I will give them a call. For example, just the other week I had a teacher that had not signed in yet. I did not have my phone on me. And I had done my rounds and noticed she wasn't here, checked the book, didn't see her signed in. So I went and checked my phone, noticed I did not have a missed call from her. So I knew to call and check back on her.

Q. Do you know Dr. Cedric Magee?

A. Yes, sir.

Q. Who is he?

A. He is now our deputy superintendent.

Q. What was his position at the time that Ms. Holly was employed with the District?

A. Associate superintendent.

Q. Okay. So in that chain of command, was he one of your supervisors, too?

A. Not with this -- with regard to personnel -- would leave if they are absent or, you know, sick. Not for that, no, sir.

Q. What about -- you already told me this. Are you familiar with any policy or do you know of any policy with the District that requires an employee to be informed before a decision to terminate is made?

A. I'm not -- I'm not familiar with that part of the process.

Q. Okay. Did you ever consider providing any sort of accommodation for Ms. Holly so she could return to work sooner?

A. I didn't have -- I hadn't been presented with a reason to provide accommodations.

Q. You said you had not been presented with a reason?

A. I had not.

Q. That's not something you ever considered?

A. The only conversations I had was when she called to tell me about what the doctor said -- what the doctor recommended coming back in January.

Q. So is it accurate that you never

discussed or considered providing any sort of accommodation for her to come back to work sooner?

A. I'm going to make sure I understand your question. Can you repeat that again?

Q. Yeah, and I'm trying to rephrase it so you can understand what I'm asking. Is it fair to say that you never considered or discussed with anyone providing an accommodation to Ms. Holly so that she could return to work sooner?

A. No, sir.

Q. Okay. Did you ever ask anybody while Ms. Holly was on leave when she was returning back to work?

A. I don't normally initiate those conversations, ever. I don't initiate those conversations. What I can tell you is when teachers in the building have conversations about, you know -- well, you know, for example, when she was getting ready to go out for maternity leave she had never discussed with me when she was leaving. So I didn't know when she was going out for maternity leave until the day she left. That's when she notified me that, you know, this was her last day. You know, but teachers would say, you know, you've got to get this done because

she's not going to be here. Around that time we were trying to plan the baby shower. I didn't have a date, so I didn't know when she was leaving. So I said, well, let's just plan it for this day, and teachers would make conversations about -- or have a conversation, well, she's going to be gone here. And I said, well, how do you know, how do you know she's going to be gone. So I would ask that question when we were trying to plan for the baby shower. Now, when she was gone teachers would, again, have conversations about well, when Holly comes back, and I was, like, okay, well, when is she coming back. It would be something like that. It's nothing that I -- we never did -- I don't bring up conversations when people are out like that. Now, if we are trying to plan something, any event for teachers, which we often do in celebration of the weddings and baby showers, things like that, you know, we try our best to plan and celebrate with them. And I may have asked in that instance. But I don't make a habit of asking other staff about staff's personal leave.

Q. Do you remember the teachers who had those conversations? Do you remember their names?

A. Not specifically, no. I just know that I remember us trying to plan for that -- that baby shower.

Q. So who all was involved with planning that baby shower?

A. Everyone. We work as a team here.

Q. So, you mean like all the teachers there at the school and the administration?

A. Yes, we would send out notification, you know, like, what grade level would try to get a gift -- it's, I guess, customary the grade levels try to work together on, you know, buying gifts together. Kind of a team effort on joining together. Some people will buy individual gifts, but as a whole, we'll, like, come together and we'll buy the gifts and decide who's going to bring what, what foods, or what grade level or what team. If there's going to be a leadership team that's going to bring the drinks or things like that or who's going to do the cakes. So it's kind of a whole -- everyone chips in.

Q. Okay.

MR. FRENCH: I guess I'll pass the witness. I don't have anymore questions.

MR. PEEPLES: I don't have any

questions.

(Time Noted: 12:49 p.m.)

SIGNATURE/NOT WAIVED

ORIGINAL: MR. FRENCH, ESQ.

COPY: MR. PEEPLES, ESQ.

CERTIFICATE OF DEPONENT

DEPONENT: LAKEISHA BATTY
DATE: May 17, 2023
CASE STYLE: Holly vs. Vicksburg Warren School District, et al.
ORIGINAL TO: MR. FRENCH, ESQ.

I, the above-named deponent in the deposition taken in the herein styled and numbered cause, certify that I have examined the deposition taken on the date above as to the correctness thereof, and that after reading said pages, I find them to contain a full and true transcript of the testimony as given by me.

Subject to those corrections listed below, if any, I find the transcript to be the correct testimony I gave at the aforestated time and place.

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This the _____ day of _____, 2023.

_____
LAKEISHA BATTY

State of Mississippi
County of _____

Subscribed and sworn to before me, this the _____ day of _____, 2023.

My Commission Expires:

_____ _____
Notary Public

CERTIFICATE OF COURT REPORTER

I, Robin G. Burwell, Court Reporter and Notary Public, in and for the State of Mississippi, hereby certify that the foregoing contains a true and correct transcript of the testimony of LAKEISHA BATTY, as taken by me in the aforementioned matter at the time and place heretofore stated, as taken by stenotype and later reduced to typewritten form under my supervision by means of computer-aided transcription.

I further certify that under the authority vested in me by the State of Mississippi that the witness was placed under oath by me to truthfully answer all questions in the matter.

I further certify that, to the best of my knowledge, I am not in the employ of or related to any party in this matter and have no interest, monetary or otherwise, in the final outcome of this matter.

Witness my signature and seal this the 5th day of June, 2023.

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My Commission Expires:
April 6, 2025

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VICKSBURG WARREN
SCHOOL DISTRICT

SCHOOL BOARD
James Stirgus, Jr., President
Sally Bullard, Vice President
Bryan Pratt, Secretary
Kimble Slaton, Member
Alonzo Stevens, Member

EXHIBIT

G

Jessica Holly
204 Alfred
Vicksburg, MS 39180

December 15, 2020

Dear Ms. Holly,

Upon review of your recent absences as pertains to the Family Medical Leave Act your 12 weeks (60 days) of Family Medical Leave expired as of Friday, December 11, 2020. Payroll records show that you have also entered leave without pay status. As of today, December 15, 2020 you have not reported back to work. It is with deep regret that a recommendation to the Board of Trustees will be made on Thursday, December 19, 2020 to terminate your employment with the district effective December 15, 2020.

The Vicksburg Warren School District values its employees and hoped that you would have been able to return to work. The decision to terminate your employment in no way reflects upon your job performance, and you would leave your District employment in good standing. In the future, if you are able to return to work we encourage you to re-apply for any position in which you are qualified.

If you have any questions please contact please feel free to contact the Personnel Office.

Sincerely,

Chad Shealy

Chad Shealy
Superintendent

EXHIBIT

H

December 22, 2020

Chad Shealy

1500 Mission 66

Vicksburg, Ms. 39180

Mr. Shealy,

I hope this letter finds you well! I am requesting a full due process hearing on the termination of my employment from the Vicksburg Warren School District.

Thanks in Advance,

Jessica R. Holly

EXHIBIT

1

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*ALSO ADMITTED IN LOUISIANA

LANDMAN TELLER (1907-1995)
LANDMAN TELLER, JR. (1941-2016)

February 12, 2021

FILE COPY

Preston Rideout, Esq.
203 Walthall Street
Greenwood, MS 38930

Re: Jessica Holly

Dear Bo:

This will confirm our telephone conversation regarding your client Jessica Holly and her termination from the Vicksburg Warren School District (VWSD). Holly concluded her FMLA leave on or about December 11, 2020. She was advised in writing prior to that time that she would need to make arrangements if she intended to keep her employment with the School District as her job would no longer be protected (see attached letter from the VWSD Benefits Manager).

Additionally, on December 14, 2020, she was called by the Human Resources Director and notified again that she would need to meet with her building principal immediately if there was any hope of her job being preserved. Following no other discussions with the Human Resource Director, Benefits Manager, or the Principal, and the fact that she did not return to her employment, the decision was made to terminate her employment on December 17, 2020, at the monthly school board meeting.

It is clear from this information that Holly was given ample opportunity to present her side of the story as to why she should not have been terminated pursuant to the FMLA federal law. She did not avail herself of those due-process procedures.

Nevertheless, the School District is willing to give her a post-termination hearing at the next school board meeting on February 25, 2021. She will be allowed an opportunity to be heard by the Board of Trustees as to why her job should not have been terminated according to the FMLA.

This will also confirm that I have been advised that Holly has an outstanding balance at the District in excess of $10,147.86 for personal and sick leave days that she was advanced (based on accrual considering her time of employment in the District). A summary is attached. We need to discuss making arrangements for her repayment of these funds at your earliest convenience.

Please advise whether your client is interested in the hearing on February 25, 2021. If so, I will give you specifics as to the time and parameters under which the hearing will be conducted.

This will also advise that this letter is simply an overview of the situation. It is not meant to be an exhaustive reply to any allegations of Holly that her job was not abandoned and that it should not have been terminated. VWSD reserves all rights and defenses that may be applicable under the law.

I appreciate your courtesies.

Sincerely,

W. BRIGGS HOPSON, III
WBH/crm

cc: Chad Shealy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Jessica Holly ("Plaintiff"), by and through counsel, files this Memorandum in Support of her Rule 56(a) Motion for Summary against Defendant Vicksburg Warren School District (the "District"). In support of its Motion, Plaintiff would show the Court the following:

I. INTRODUCTION

On December 15, 2020, Ms. Holly was terminated from her job as Assistant Principal at the Vicksburg Intermediate School District after working for 20 years in the District with no issues. The termination letter stated the sole reason was for taking medical leave (the day before her termination) on Monday, December 14, 2020. *Id*. Ms. Holly's doctor, however, recommended that she (after having taken 60 days of FMLA leave) take five additional days of leave to recover from a botched caesarian section surgery. Plaintiff was told that leave would be approved as long as her principal consented. Ms. Holly was terminated despite receiving approval, however.

Defendant terminated Plaintiff without notice or hearing in violation of long-established federal and state law protecting procedural due process rights. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). Moreover, Defendant arrived at its decision capriciously and arbitrarily, thus violating Plaintiff's substantive due process rights.

In light of *Loudermill* and its voluminous progeny over the last thirty-five (35) years, it was arbitrary and capricious, and reckless to disregard this established body of law and terminate Ms. Holly's contract without affording any pre-deprivation and post-deprivation due process remedies.

Defendant's stated reason for terminating her—that is, because she failed to show up for one day of work without prior leave approval—belied the fact she followed proper protocols for receiving leave. Ms. Holly's principal, whose recommendation to terminate Ms. Holly without just reason was rubber-stamped by the School Board, provided deposition testimony conceding to the fact that Ms. Holly was terminated due to her perceived inability to work and show up to work. The true basis for Ms. Holly's termination, therefore, violates the ADA. Further, by virtue of violating the rights above, Ms. Holly's contract for employment with Defendant was breached.

II. UNDISPUTED FACTS

Ms. Holly was pregnant in 2020 which required her to miss 60 days at work. **Ex. A, Pl.'s FMLA Leave Schedule**. She took her leave of absence under FMLA from September 14, 2020, to December 11, 2020. *Id*. Ms. Holly had a caesarian section on September 24, 2020, and her doctor cut her bowel during the operation. **Ex. B, Pl.'s Affidavit at ¶5**. She had repair surgery that same day. *Id*. Her doctors later advised that she take an additional five days of leave so that she may recover from post-pregnancy surgery. *Id*. Because of the Christmas break schedule, Ms. Holly's return date would be January 4, 2021. *Id*.

On October 30, 2020, Ms. Holly provided the District with disability forms filled out by her doctor explaining the need for the **five additional leave days** starting December 14, 2020. **Ex. C, Request for Additional Leave**. The October 30, 2020, email from Ms. Holly to Ms. Billia Knight reads:

> Good morning! My doctor has extended my leave until January 4th. Her original date of discharge for me was December 14th. I am still being seen by her and now GI Associates. I have included her latest form for my disability since it has the new discharge date. I think that extension would put me at 4 days past the 60.[1] Let me know if there is anything else I need to include.

Id.

Over a month later, on December 7, 2020, Billia Knight, the District's Benefits Manager, responded to Ms. Holly with an email containing a 60-day notice letter claiming that the additional days would be five days past her 60-day mark of December 11, 2020. **Ex. D, District's December 7, 2020 Response to Leave Request**. The letter added that the additional leave would not be granted without approval from Ms. Holly's principal at Vicksburg Intermediate School. *Id*. Ms. Holly's principal, Lakeisha Batty, was copied on the email and made aware that her approval was necessary. *Id*.

Ms. Holly was not concerned since she had already informed Ms. Batty of her doctor's orders for additional leave a month before on November 4, 2020. *See* **Ex. E, Pl.'s Dep. Transcr.** at 29-31; **Ex. F, Batty Dep. Transcr.** at 28: 20-25; 29:1-2; 35:1-5. Ms. Batty expressed she did not oppose Ms. Holly's doctor's recommendation. *Id*.

On December 15, 2020, Ms. Holly was sent a termination letter on the first day she did not show up to work without a moment's notice on Monday, December 14, 2020. **Ex. G, Termination Letter**. Oddly, when she was terminated, the District based its official decision on the principal never approving Ms. Holly's leave request. *Id*. The letter of termination, in pertinent part, stated:

> The Vicksburg Warren School District values its employees and hoped that you would have been able to return to work. The decision to terminate your employment in no way reflects *upon your job performance*, and you...leave your District employment in good standing. In the future, if you are able to

[1] The "60 day mark" referring to the twelve (12) weeks unpaid leave allowed under the Family and Medical Leave Act, 29 USC §2601 et seq.

> return to work we encourage you to re-apply for any position for which you are qualified (emphasis added).

Id.

The District offered Ms. Holly no pre-deprivation due process before being terminated. Ms. Holly requested a post-deprivation due process hearing on December 22, 2020. **Ex. H, Request for Hearing**. The hearing request letter, in pertinent part, says: "I am requesting a full due process hearing on the termination of my employment from the Vicksburg Warren School District." *Id*. The District held the position that Ms. Holly had already been afforded all the process due to her in the form of various contacts by school personnel telling her that her Family Medical Leave Act ("FMLA") leave was ending on December 11, 2020; but, nevertheless, she could have some form of a post-deprivation hearing within "parameters" to be set by the district. *See* **Ex. I, District's Letter re Hearing**. Plaintiff contends these "parameters" were to be limited to a short time for Ms. Holly to make a statement to the Board. *Id*.

Ms. Holly exhausted her administrative remedies in filing a charge with the EEOC on March 3, 2021, against the District. Pl.'s Affidavit at ¶9. She received her "right to sue" letter via email on April 29, 2022. *Id*. She filed a complaint on May 19, 2022, alleging Defendants: (a) violated her procedural and substantive due process rights under the 14th Amendment; (b) violated her rights under the ADA, and; (c) breached her employment contract and covenant of good faith and fair dealing.

Plaintiff's evidence in support of its Motion consists of the following exhibits:

Exhibit A, Pl.'s FMLA Leave Schedule

Exhibit B, Pl.'s Affidavit

Exhibit C, Request for Additional Leave

Exhibit D, District's December 7, 2021 Response to Leave Request

Exhibit E, Pl.'s Dep. Transcr.

Exhibit F, Batty Dep. Transcr.

Exhibit G, Termination Letter

Exhibit H, Request for Hearing

Exhibit I, District's Letter re Hearing

Plaintiff also adopts by reference all of Defendant's exhibits.

III. LAW AND ARGUMENT

Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for granting a motion for summary judgment is essentially the same as granting a directed verdict. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986). Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Id*.

The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553(1986).

If the moving party has sustained its burden, the burden then shifts to the nonmovant to identify specific facts, drawn from materials in the file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. *See Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553; *Anderson*, 477 U.S. at 256, 106 S.Ct. at 2514 (a party opposing a properly

supported motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial.").

Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552; *see Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512 (parties bear the same substantive burden of proof as would apply at a trial on the merits).

A. The Board's decision to terminate Ms. Holly without a pre-termination hearing and proper post-termination hearing violated her due process rights under the 14th Amendment and Art. 3, §14 to the Mississippi Constitution.

The Complaint specifically alleges that Ms. Holly was deprived of adequate pre-deprivation and post-deprivation due process before and after her contract was terminated. Docket No. 1 at ¶¶33-51. The United States Constitution provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The United States Code Annotated § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983.

"The first inquiry in every due process challenge is whether the Plaintiff has been deprived of a [constitutionally] protected interest in 'property' or 'liberty.'" *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40 (1999). Protected property interests derive "from an independent source

such as state law, a contract, or other 'understandings.'" *Stem v. Gomez*, 813 F.3d 205, 210 (5th Cir. 2016) (quoting *Evans v. City of Dallas*, 861 F.2d 846, 848 (5th Cir. 1988)). Mississippi law recognizes that a school teacher has a valuable right in her contract of employment and the legislature undertook to make school teachers reasonably secure in their jobs, subject to removal only for serious causes. *Madison County Bd. of Ed. v. Miles*, 173 So. 2d 425, 427 (Miss. 1965).

Based on her contract whose term ran through 2021, it cannot be disputed that Ms. Holly had a property interest in her employment. *Frazier v. Garrison I.S.D.*, 980 F.2d 1514, 1530 (5th Cir. 1993) ("[A] teacher employed under the terms of a fixed term contract as defined by [state law] has a constitutionally protected property interest in employment until the term of the contract has expired."). Ms. Holly's property interest in the contract was in force at the time she was terminated. Before she, as a public employee with a protected contractual property interest, could be terminated, she must have been given a pre-deprivation due process hearing.

Greene v. Greenwood Pub. Sch. Dist., 890 F.3d 240, 244 (5th Cir. 2018) is highly instructive: Plaintiff Montrell Greene, a former Superintendent of Greenwood Public School District in Greenwood, Mississippi, filed claims against the school district and board members who voted to terminate him alleging, among other things, that the Board terminated him without providing him a pre-termination hearing in violation of his 14th Amendment due process rights. *Id.* at 242. The defendants moved to dismiss for failure to state a claim arguing that Greene improperly filed his suit in federal court instead of chancery court in violation of the state statutory scheme. *Id*. The defendants further argued that the statutory scheme prohibited relief for the defendants' failure to provide a pre-termination hearing. *Id*.

The Court ruled that Greene's claim alleging he did not receive a pre-termination hearing "adequately stated a procedural due process claim." *Id.* The Court established, "at a minimum . . . an employee facing termination must be given 'notice and an opportunity to respond' *before* the termination takes effect." *Id.* at 242 (emphasis in original) (quoting *Loudermill*, 470 U.S. at 546). Finally, the Court firmly reinforced that the right to a pre-deprivation hearing is a constitutional guarantee under procedural due process:

> Even if Mississippi law did prohibit Defendants from giving Greene a pre-termination hearing, that would have no effect on the viability of his procedural due process claim. The Fourteenth Amendment required Defendants to afford Greene a pre-termination hearing; a state law prohibiting such a hearing would not diminish Greene's rights under federal law. In fact, such a law would indicate that "the deprivation was authorized by the state, thereby implicat[ing] the Due Process Clause even more strongly.

Id. at 244 (internal citation and quotation marks omitted).

Because Greene alleged that he possessed a vested contract interest and that the defendants did not give him a hearing before terminating him—that is, depriving him of that interest—, he had stated a valid procedural due process claim. *Id*. These are precisely the allegations Ms. Holly makes in the Complaint. *See* Docket No. 1 at ¶¶33-51.

In this case, Ms. Holly, a principal with a continued interest in her employment, had, at a minimum, the following Fourteenth Amendment Pre-Deprivation Procedural Due Process rights before being deprived of her continued employment interest:

> (a) to be advised of the cause or causes for his termination in sufficient detail to fairly enable him to show any error that may exist;
>
> (b) to be advised of the names and the nature of the testimony of witnesses against him; and,
>
> (c) at a reasonable time after such advice, be accorded a meaningful opportunity to be heard in her own defense.

Parks v. Terrebonne Par. Consol. Gov't, 759 F. App'x 220, 224 (5th Cir. 2019) (explaining that pre-termination due process requires notice, an explanation of the employer's evidence, and an opportunity to present his side of the story). These procedures were not provided to her, and even an offer to hold a post-termination hearing does not moot her claim. *See Chiles v. Morgan*, 53 F.3d 1281, 1995 WL 295931, at *1–2 (5th Cir. 1995) ("postdeprivation remedies do not affect his entitlement to pre-deprivation process.").

Pre-deprivation and post-deprivation due process work in tandem. If the post-deprivation due process offered is strong (viz. - a full due process hearing with the right to cross-examine, call witnesses, introduce documents, etc.), then the need for pre-deprivation due process is mitigated. Conversely, if the pre-deprivation due process afforded is weak, then the post-deprivation due process must be strong (viz. - a timely and full due process hearing with the right to cross-examine, call witnesses, introduce documents, etc.). The Supreme Court has found that a post-termination hearing absolves the strong need for a pre-termination in rare circumstances, however. *Id*. *See also Greene*, *supra*, at 243 (In "rare and extraordinary situations . . . deprivation of a protected interest need not be preceded by opportunity for some kind of hearing, and a postdeprivation hearing will satisfy due process requirements. This case does not present such a situation." (internal citation and quotation marks omitted)).

In Ms. Holly's case, there was no due process afforded pre-deprivation. Therefore, to mitigate this total absence of pre-deprivation due process, the School District had a duty to provide Holly post-deprivation a complete due process hearing allowing, among other things, the exchange of evidence and exhibits, direct testimony, and cross-examination. After having received no pre-deprivation due process, Plaintiff was offered a limited opportunity to share her side with the Board under certain "parameters." *See* Ex. I, District's Letter re Hearing. These "parameters" were to be

limited to a short time for Ms. Holly to make a statement to the Board. *Id*. Instead, the District deprived her of her post-deprivation rights by offering a truncated opportunity to address the Board for several minutes subject to unstated "parameters." Such actions by the Board were a pretext to cover its desire to deprive Ms. Holly of her rights for no justifiable reason with impunity.

Further, when published rules and regulations establish a particular statutory procedure for the termination of employment, they may add to the constitutional minimum. *Id*. (holding that both pre-termination and post-termination hearings are required to satisfy due process); *see also Loudermill*, 470 at 541 ('"the root requirement" of the Due Process Clause [is] 'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.'" (citation omitted)). Additional procedural rights were owed to Plaintiff in Miss Code Ann. Rules §37-9-111, adopted by reference in the educator disciplinary statute, Miss. Code Ann. §37-9-59. These procedural rights should have, but were not, satisfied by a termination with no due process and an abbreviated post-termination process with "parameters" to be fixed.

B. Defendant's decision to terminate Ms. Holly violated her Substantive Due Process rights.

"Whereas procedural due process focuses on the procedures the government must follow before it deprives a person of life, liberty, or property[,] substantive due process asks whether the government has an adequate reason for the deprivation. *McMullen v. Starkville Oktibbeha Consol. Sch. Dist.*, 200 F. Supp. 3d 649, 658 (N.D. Miss. 2016) (citation and internal quotation marks omitted). "Public officials violate substantive due process rights if they act arbitrarily or capriciously." *Finch v. Fort Bend Indep. Sch. Dist.*, 333 F.3d 555, 562–63 (5th Cir. 2003). "To prove a substantive due process violation in this context, an employee must show that a public employer's decision so lacked a basis in fact that it could be said to have been made without

professional judgment. *Texas v. Walker*, 142 F.3d 813, 819 (5th Cir. 1998). (citation and internal quotation marks omitted).

As outlined above, Ms. Holly was entitled to procedural protections under state and federal law, which were not provided. In addition, although Ms. Holly's termination letter stated she was terminated for her failure to report to work for one day, *see* Ex. G - Termination Letter, it ignores the fact that Ms. Holly received prior approval based on doctor's orders.

During her deposition, Ms. Batty confirmed that she had a conversation with Ms. Holly before she was terminated and did not oppose the doctor's orders; she simply wanted Ms. Holly to inform Billia Knight with Human Resources.

> **Q. Do you recall the details of that conversation [between you and Ms. Holly]?**
>
> *A. What I remember was she told me she was not coming back to work until after January at the request of her doctor.*
>
> *... I remember saying to myself, you know, who am I to second guess what a doctor says.*
>
> *...*
>
> *... and my response was, okay, make sure have a conversation with Billia Knight.*
>
> **Q. So did you ever say anything to her to the effect that you would be opposed to her getting those additional days?**
>
> *A. No.*

Batty Dep. Transcr. at 28: 20-25; 29:1-2; 35:1-5. Here, Ms. Batty expressed she did not oppose Ms. Holly's doctor's recommendation. She did not dispute Ms. Holly's disability. In her December 7, 2020 letter, Ms. Knight emphatically stated that Ms. Holly simply needed approval from her principal. Exhibit D, District's December 7, 2021 Response to Leave Request**.** Because her

principal had approved her leave, and the District had received the necessary paperwork, Ms. Holly had complied with her requirements for leave approval.

Interestingly, during the relevant time, Ms. Batty claimed she was not even aware that her approval was needed, despite being copied to the December 7 email.

> **Q. . . . did you know that Ms. Holly needed your approval to get the additional days of leave?**
>
> *A. No.*

Batty Dep. Transcr. 38: 19-22. Ms. Holly should therefore not have been terminated after the first day she took leave per her doctor's request. Yet, according to Ms. Batty, Ms. Holly was terminated based on Ms. Batty's recommendation, because she could not show up to work. *Id*. at 48-50 (explaining that she recommended Ms. Holly's termination because she could not work and she needed someone who could). She told her principal she needed the extra five (5) days of leave; the principal had approved the extension subject to her getting the paperwork to Billia Knight at Central Office; Ms. Holly submitted the paperwork and doctor's statement for her short-term disability coverage to Ms. Knight; Finally, Ms. Knight had clearly implied the only thing needed for approval of the extension was the principal's approval. Therefore, the District's decision to terminate Ms. Holly was completely unfounded and arbitrary and capricious in violation of Ms. Holly's substantive due process rights.

C. Defendant's decision to terminate Ms. Holly without a pre-termination hearing breached her employment contract.

It is undisputed that Jessica Holly had a contract with the Vicksburg Warren School District for the entire 2020-2021 school year. The District violated that contract when, on December 15, 2020, it terminated the contract without affording her pre-deprivation due process and without making a reasonable accommodation in response to her request to extend her unpaid leave by five

days. As explained above, Due Process required that Ms. Holly was entitled to an adequate pre-termination hearing and post-termination hearing.

Every educator's contract has a provision in it which provides: "This contract shall be subject to all applicable policies, resolutions, rules and regulations of the employer, the Mississippi Educator Code of Ethics and Standard of Conduct adopted by the state Board of Education and the laws." Miss. Dept. Of Education Regulations, CMSR07-000-003, Chap. 24, Rule 24.1. The post-termination hearing was required under Mississippi law. But those procedures were inadequately followed by the District.

> Thus, to the extent the defendants failed to provide plaintiff with the hearing rights afforded by Miss. Code Ann. §37-9-111, it also violated the contract between the parties. To the extent these rights were mandatory on the part of the district, they also become a part of the rights protected by the Due Process Clause of the Fourteenth Amendment.

Docket No. 1 at ¶71.

D. The facts demonstrate that Plaintiff's rights were violated under the American with Disabilities Act ("ADA").

Ms. Holly can also prove her unlawful discrimination and failure to accommodate claims under the ADA.

To establish a prima facie discrimination claim under the ADA, Ms. Holly must show that she 1) was qualified for the job, 2) was disabled, and 3) was the subject of an adverse employment action because of her disability or the perception of a disability. *Zenor v. El Paso Healthcare System, Ltd.*, 176 F.3d 847, 851 (5th Cir. 1999). The ADA defines "qualified individual" as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111 (8). To be considered disabled under the ADA, an individual must have "(A) a physical or mental impairment

that substantially limits one or more life activities ...; (B) a record of such an impairment; or (C) [be] regarded as having such an impairment." 42 U.S.C. § 12102(1) (A-C) (emphasis added). "[M]ajor life activities include, but are not limited to ... working." 42 U.S.C. § 12102(2) (A).

To establish a prima facie case of discrimination based on the failure to accommodate a disability, the plaintiff must show: "(1) the employer is covered by the statute; (2) she is an individual with a disability; (3) she can perform the essential functions of the job with or without reasonable accommodations; and (4) the employer had notice of the disability and failed to provide accommodation." *Mzyk v. Ne. Indep. Sch. Dist.*, 397 F. App'x 13, 15 n.3 (5th Cir. 2010) (citation omitted). "Plaintiffs ordinarily satisfy the knowledge element by showing that they identified their disabilities as well as the resulting limitations to a public entity or its employees and requested an accommodation in direct and specific terms." *Smith v. Harris Cnty.*, 956 F.3d 311, 317 (5th Cir. 2020) (emphasis added). After an accommodation has been requested, "[t]he employer must engage in an 'interactive process' with the employee with 'the goal of finding an appropriate accommodation for the limitation.'" *Jackson v. Blue Mountain Co.*, 761 F. App'x 356, 360 (5th Cir. 2019) (citation omitted).

"Under the ADA, discrimination need not be the sole reason for the adverse employment decision, [but] must actually play a role in the employer's decision making process and have a determinative influence on the outcome." *Pinkerton v. Spellings*, 529 F.3d 513, 519 (5th Cir. 2008) (citation omitted).

Ms. Holly can show that her termination was based on direct evidence of discrimination. "A statement or document which shows on its face that an improper criterion served as a basis—not necessarily the sole basis, but a basis—for the adverse employment action [is] direct evidence

of discrimination." *Clark v. Champion Nat'l Sec., Inc.*, 952 F.3d 570, 579 (5th Cir. 2020) (citation omitted).

Ms. Holly was clearly qualified for her position, which is uncontested. It is also undisputed that she was disabled. When her employment contract was terminated and she was fired, Ms. Holly had a physical impairment that substantially limited her ability to work. *See* 45 C.F.R. §84.3(j)(ii) ("Major life activities means...working."). Just having completed twelve weeks of FMLA, Ms. Holly had a record of her being unable to come to work. Ms. Holly submitted documentation that she had a disability in her request for leave, and Ms. Batty conceded that she had a disability. *See* Batty Dep. Transcr. at 28: 20-25; 29:1-2; 35:1-5.

Pursuant to her doctor's orders, Ms. Holly requested one additional week of leave, a reasonable accommodation. *See* Ex C. It was "reasonable" because her physician also opined she would be able to return to work on January 4, 2021, when the school district re-opened for classes. *Id.* Notably, her only restriction being no heavy lifting. *Id*. It was a reasonable accommodation because it would have allowed Jessica Holly to return to work in the immediate future and perform the essential functions of her job. In fact, because heavy lifting was not a part of her job, she would have in effect been returning to her job with no restrictions.

Although she needed an additional five days before she would come back to work, the District never considered this reasonable accommodation; she was terminated immediately instead.[2] *See* Batty Dep. Trascr. at 64:5-10. As Ms. Batty testified, the true reason for Ms. Holly's termination was that she believed Ms. Holly could not be present to do her job, despite her doctor's orders to the contrary:

[2] According to Ms. Batty, she made a recommendation to terminate Plaintiff without considering the request for accommodation. Batty Dep. Transcr. at 48:1-19.

> **Q. I'm just asking you why you recommended to the board to terminate her for not coming to work on December 14th when you knew that her doctor recommended not to return until January 4th. Just take me to why you made that decision?**
>
> *A. I needed someone that was going to be at work. I needed help. I had gone pretty much -- again, I started in July, she had already been out quite a few days there, so many days that I couldn't even give a fair assessment performance. And so we need -- I need someone that was going to be at work. And her not coming to work, that's going to put me in a situation where I'm still playing catch-up. If our goal is to grow students and teach, I need someone that's going to help me teach, coach the teachers, help teach the children, carry out the duties of the day. And not coming to work, I need help.*

Id. at 49:4-23.

Here, Ms. Batty admits that, even after she approved the doctor's recommendation that Ms. Holly needed a mere five additional days of leave to return to work, she recommended terminating Ms. Holly. Her only basis for the recommendation to terminate Ms. Holly was because she did not feel Ms. Holly could show up to work or help, apparently due to Ms. Holly's disability. Ms. Batty's reasons for recommending Ms. Holly's termination, coupled with the fact that Ms. Holly received approval to take the additional leave, conflict with Ms. Holly's termination letter stating that Ms. Holly was terminated for taking leave without approval. Since Ms. Holly has proven that she received approval and Ms. Batty did not contest it, it is clear that the stated reasons in the termination letter were pretextual: Ms. Holly was terminated because of the belief that she could not work based on her disability.

Therefore, the District's failure to provide Plaintiff five additional days to recover from her surgery violates the ADA.

CONCLUSION

Pursuant to the foregoing arguments, Plaintiff Jessica Holly respectfully requests that this Court grant Plaintiff's Motion for Summary Judgment.

Date: August 21, 2023

Respectfully submitted,

By: /s/ Keith B. French
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MS Bar No. 24115073

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(832) 243-6153
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and the foregoing was served upon counsel via electronic filing.

DATED this 21st day of August, 2023.

/s/ Keith B. French
Keith B. French

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

v. — CASE NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

UNOPPOSED MOTION FOR EXTENSION TO FILE RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COME NOW the defendants and file the following Unopposed Motion for Extension to File Response to the plaintiff's Motion for Summary Judgment:

1. The plaintiff filed a Motion for Summary Judgment and Memorandum Brief on August 21, 2023 [Docs. 18 & 19].

2. The defendants' response is due on September 5, 2023, since September 4, 2023, is a federal holiday.

3. Counsel for the defendants will be out of the country the week of August 28, 2023, and needs additional time in which to prepare the defendants' response upon returning to the office.

4. The plaintiff, by and through her attorney, is agreeable to a one-week extension for the defendants to file their response.

5. The defendants, accordingly, ask the Court to allow them until September 11, 2023, in which to file their response to the plaintiff's Motion.

6. The foregoing Motion is not being filed for improper purposes or to unreasonably delay this matter.

WHEREFORE, PREMISES CONSIDERED, the defendants request that this Court enter an Order extending the time for them to respond to the plaintiff's Motion for Summary Judgment.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON, AND NANCY BULLARD

BY: _/s/Timothy M. Peeples_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2023, I electronically filed the above foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Timothy M. Peeples_____
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CIVIL ACTION NO. 3:22-cv-00265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT, et al. **DEFENDANTS**

ORDER

A settlement conference in this matter is scheduled for Thursday, October 12, 2023 at 9:30 a.m. in **Courtroom 6D, United States Courthouse, 501 E. Court Street, Jackson, Mississippi.**

A settlement conference requires serious and thorough preparation. In accordance with Local Rule 16(g)(3), this Order sets out the procedures that the parties are to follow in preparing for the settlement conference, and the procedures that the Court will typically employ in conducting the conference. Counsel must provide a copy of this Order to their clients, and discuss these procedures with them before the settlement conference.

1. **PRIOR SETTLEMENT NEGOTIATIONS REQUIRED**. The settlement conference is not a vehicle to facilitate *the commencement* of settlement negotiations. The Court expects the parties to have *recently* exchanged **at least one written settlement demand and one written settlement offer**. To wit, at least fourteen (14) days before the settlement conference the plaintiff must serve on the defendant a written settlement proposal, which must include a specific demand amount. The defendant must respond to the plaintiff in writing with a specific offer amount. This exchange must occur within the specified time period, regardless of whether the parties have engaged in prior negotiations. The parties should not file or otherwise copy the Court on these exchanges. Rather, the parties must include their written settlement proposals in their

respective Confidential Settlement Memoranda to the Court, which are due seven (7) days prior to the settlement conference. The parties must employ these discussions with the intent that the case actually be settled, if possible, without court participation. In other words, the parties and their counsel have an affirmative, good faith duty to take settlement discussions as far as reasonably possible without the assistance of the court.

2. **ATTENDANCE OF PARTIES REQUIRED.** Unless the Court allows otherwise by otherwise by separate order, **parties with full settlement authority are required to attend the conference in person**. If a party is an individual, that individual must personally attend; if a party is a corporation or governmental entity, a representative of that corporation or governmental entity (other than counsel of record) with full settlement authority must personally attend; and if a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority must attend in person. The presence of the parties and their direct participation in the discussions and "give and take" that occur materially increase the chances of settlement. Moreover, a "few minutes of observation of the parties in the courtroom is more informing than reams of cold record." *Ashcraft v. Tennessee*, 322 U.S. 143, 171 (Jackson, J., dissenting). Thus, absent a showing of extraordinary circumstances[1], the Court will not permit a client or an insurance adjuster merely to be available by telephone. If extraordinary circumstances arise, counsel shall contact Judge Isaac's chambers with a written request to excuse a person's presence; said request shall set forth the extraordinary circumstances necessitating the request. **All participants in the settlement conference must be prepared to stay until at least 5:00 p.m. (Central Standard Time), unless the Court opts to terminate the conference earlier.**

3. **FULL SETTLEMENT AUTHORITY.** The Court reserves a substantial block of

[1] In all but the rarest instances, the time and expense of travel to the Southern District of Mississippi shall not be considered an extraordinary circumstance.

time for each settlement conference, both in preparing for the conference and in conducting it. The Court's time is wasted and opposing parties incur unnecessary expense if a party comes to the settlement conference with zero or limited authority. "Full settlement authority" means that **the person present at the settlement conference must be the decision maker.** The decision maker must have *both* authority to make a final and binding settlement *and* authority to make the decision to the last offer or demand. It does not require that any party make any particular offer or demand, but it does require that the person who is personally present be fully authorized to make the decision to the last offer or demand without having to get additional authorization from any person not present at the conference[2]. In cases involving governmental entities that require approval from a legislative body for settlement over a certain dollar amount, the Court will explain to counsel and the person present what it expects to be conveyed to the governmental entity.

4. **SANCTIONABLE CONDUCT.** A party who comes to a settlement conference without full settlement authority may be sanctioned. If a conference must be adjourned so that a party may obtain additional authority, that party may be sanctioned, including, but not limited to, fees incurred by the opposing party and/or their counsel with reconvening.

5. **CONFIDENTIAL SETTLEMENT MEMORANDA.** The court directs the parties to **submit a confidential settlement memorandum no later than seven (7) days prior to the scheduled settlement conference via e-mail (isaac_chambers@mssd.uscourts.gov)**. The memorandum shall set forth the following: (a) the relevant positions of the parties concerning factual issues, issues of law, and damages along with a candid assessment of those positions; (b) the settlement negotiation history of the case, including a recitation of the specific demands and offers that have been conveyed; (c) the names and positions of the individuals who will be

[2] If the person attending the settlement conference does not have authority to agree to a settlement without making a telephone call, then the person on the other end of that telephone call should attend the settlement conference.

attending the settlement conference; (d) possible settlement figures; and (e) whether the parties have adequate information to discuss settlement and, if not, how the parties will obtain sufficient information prior to the settlement conference to make a meaningful settlement discussion possible. **It will not suffice for a party to simply mention that it is prepared to negotiate in good faith.** The memo should include a settlement amount or range for which the party is agreeable to settle. The memo should not exceed five (5) pages in length. The memo will not be made a part of the case file or shared with any other party. Any party who fails to submit the required memoranda may be subject to sanctions.

6. **PRESENTATIONS AT SETTLEMENT CONFERENCE.** The attorneys must be prepared to give, if requested by the magistrate judge, a brief presentation **(five minutes or less)**, similar to an opening statement, outlining the factual and legal strengths of their case. The parties also may be permitted, if they wish, to make brief statements. The judge will then hold separate, confidential caucuses with each party.

7. **THE PARTIES SHOULD BE PREPARED TO DISCUSS THE FOLLOWING DURING SEPARATE, CONFIDENTIAL CAUCUSES AT THE SETTLEMENT CONFERENCE:**

- What are your objectives in the litigation?
- What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
- Do you understand the opposing side's view of the case?
- What are the impediments to settlement?
- What remedies are available through litigation or otherwise?
- Are there possibilities for creative resolution of the dispute?

- Are there outstanding liens? Does the plaintiff have a conditional payment letter identifying the amounts the lienholder has paid for which it will seek reimbursement?

8. **CONFIDENTIALITY.** The purpose of the settlement conference is to effectuate settlement of the case if possible, but the settlement conference will be conducted in such a manner as not to prejudice any party in the event settlement is not reached. All matters communicated to the magistrate judge in confidence will be kept confidential by the judge, and will not be disclosed to any other party.

9. **ASSESSMENT OF COSTS AND EXPENSES.** If a party appears at the settlement conference without having complied with the requirements of this order, then the court may cancel the settlement conference and assess against the non-complying party, attorney, or both, reasonable fees and expenses incurred by other parties in attending the settlement conference, as well as any expenses incurred by the court in attending the settlement conference.

SO ORDERED on this 5th day of September, 2023.

s/ LaKeysha Greer Isaac
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COME NOW Vicksburg Warren School District ("VWSD"), Bryan Pratt, Alonzo Stevens, James Stirgus, Jr., Kimble Slaton, and Sally Bullard (incorrectly named in the Complaint as "Nancy" Bullard, defendants herein, by and through counsel, and respond to the plaintiff's Motion for Summary Judgment [Doc. 18], as follows:

1. As a starting proposition, the plaintiff's Motion is incorrectly styled and should be deemed a Motion for Partial Summary Judgment since VWSD has asserted a counterclaim against the plaintiff [Doc. 4]. The plaintiff's Motion does not address the counterclaim whatsoever.

2. Regardless of the foregoing, the plaintiff's Motion must be denied since there are, at a minimum, important fact questions for the trier of fact to resolve at the trial of this matter.

3. For all of these reasons and those set out in the defendants' Memorandum Brief in Opposition to the plaintiff's Motion, the Court should deny the plaintiff's Motion.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT, BRYAN PRATT, ALONZO STEVENS, JAMES STIRGUS, JR., KIMBLE SLATON,AND SALLY BULLARD

BY: /s/Timothy M. Peeples
OF COUNSEL

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CERTIFICATE OF SERVICE

I do hereby certify that on September 11, 2023, I filed the foregoing pleading using the Court's electronic filing system which sent notice to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY

PLAINTIFF

V. CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND, NANCY BULLARD

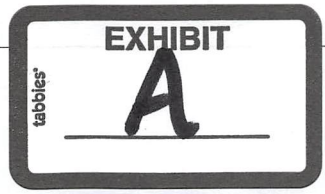
DEFENDANTS

DEPOSITION OF BILLIA KNIGHT

Taken at the instance of the Plaintiff via Zoom Teleconference, on Wednesday, May 17, 2023, beginning at 1:00 p.m.

REPORTED BY:

ROBIN G. BURWELL, CCR #1651



earlier. Do you remember receiving a fax from Ms. Holly with a lot of documents concerning her leave during this time?

A. Not to my recollection.

Q. Okay. Let me see if I can find that. I believe it's a different document. You see this document? It looks like Ms. Holly sent you a fax on September 18th, 2020. Do you recall receiving this fax?

A. I do not. Do you have the actual forms?

Q. I don't, but we can get into whether these are actually records that you can remember having received or maybe have and completed on your own. I want to go to this second page. It says -- at the top it says Jessica Holly and the date is December 7th, 2020. I'm not sure -- I'm a little confused as whether she sent this to you via fax or whether this is your handwriting. Can you tell me whether this is your handwriting?

A. It is.

Q. Okay. So on this page it looks like it's showing the days Ms. Holly took leave under FMLA. Is that correct?

A. Partially.

Q. What do you mean by partially?

A. This form states FFCRA and FMLA.

Q. Okay. But with respect to her FMLA days, September 14th, 2020, first day out and December 11, 2022. Presumably those are the days that she would have missed for FMLA purposes; is that correct?

A. December 11th, 2020; that is correct.

Q. Which would have -- if you look at the calendar, would have put her back to work on December 14, 2022, a week before the Christmas holidays. Can you see that?

A. Yes, sir.

Q. All right. Is this the sort of document that's normally kept by the school district?

A. Yes.

Q. Would this -- under FMLA with those dates, would that show the dates that she was actually approved for leave?

A. The first day out, yes.

Q. Okay. And then there is a note at the bottom. It says expected date of return January 4th, 2021. Is that your handwriting too?

A. Yes.

Q. Do you know when you would have written that down? There's a date that says December 7th,

STATEMENT OF DR. LENNIE LITTLE

STATE OF Mississippi
COUNTY OF Warren

I, Dr. Lennie Little, of lawful age, being first duly sworn, upon oath, states as follows:

1. I am the Director of Human Resources at Vicksburg Warren School District.

2. In December of 2020, while servicing as the Human Resources Director, I became aware that Jessica Holly had been given notice that her 60-Day FMLA leave was ending.

3. As a matter of courtesy, on or about December 14, I telephoned Jessica Holly to inform her that her FMLA allotted leave time had expired, and that she needed to contact the Principal of her building to discuss her current situation. During this conversation, Jessica Holly notified me that she understood her leave time had expired and that she needed to contact her Principal.

4. I was later advised that Jessica Holly had not made arrangements to return to work, and that her FMLA leave had expired.

5. As a result, the Principal recommended that her termination be placed on the Vicksburg Warren School District Board agenda for its monthly meeting, which was scheduled on December 17, 2020.

6. At that time, Jessica Holly was terminated by Board action.

Further, the affiant sayeth not.

DR. LENNIE LITTLE

SWORN AND SUBSCRIBED before me on this 9th day of April, 2021.

Mallory G. Pratt
NOTARY PUBLIC

My Commission Expires: January 11, 2025

EXHIBIT B tabbies

STATE OF MISSISSIPPI
MALLORY G. PRATT
ID No 269942
NOTARY PUBLIC
Comm Expires
January 11, 2025
WARREN COUNTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR.; KIMBLE SLATON; AND NANCY BULLARD — DEFENDANTS

MEMORANDUM BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A. INTRODUCTION

Jessica Holly ("Holly") unilaterally announced that she intended to take additional time off from work after her FMLA leave period expired. In response, the defendants asked Holly to take very reasonable steps related to her request for more time off, and she failed to comply with those reasonable requirements. Holly had ample opportunity to ensure that her unilateral demand for more medical leave days was approved, and it was her failure to do what the defendants requested that caused or, at a minimum, contributed to her termination.

As set out below in more detail, there are critical fact questions that the trier of fact must be allowed to resolve in this case. Summary judgment is not a proper vehicle for reaching a conclusion as to who is at fault here, and Holly's motion must be denied.

B. FACTUAL BACKGROUND

Holly was employed as the Assistant Principal at Vicksburg Intermediate School ("VIS") within the Vicksburg Warren School District ("VWSD") for the 2020-2021 school year [Doc. 1, ¶5; Doc. 18-5, p. 15]. Holly went out on FMLA-approved medical leave very early during the Fall 2020 semester and gave birth to a child in September 2020 [Doc. 1, ¶16; Doc. 18-5, p. 24]. Holly

was originally scheduled to return to work on December 14, 2020 [Doc. 1, ¶17; Doc. 18-3, p. 3 of 4]. Holly's FMLA leave period expired on Friday, December 11, 2020 [Exhibit "A," pp. 24-25].

During Holly's caesarian section delivery, her doctor nicked her bowel [Doc. 1, ¶16; Doc. 18-5, p. 24]. At a subsequent OB/GYN appointment, Holly's doctor suggested that she take additional time off from work and prepared an Attending Physicians Statement for American Fidelity in which she identified January 4, 2021, as Holly's new expected return to work date [Doc. 18-3, p. 4 of 4]. The form, dated October 21, 2020, was emailed to the defendants in late October but did not indicate why additional leave was necessary or how it would address whatever limitations Holly had at that time [Doc. 18-3, p. 1 of 4].

Billia Knight ("Knight"), VWSD's Benefits Manager, responded by email to Holly after receiving the form and advised Holly that since the proposed return to work date was beyond her FMLA-approved leave period, Holly would have to obtain approval for the additional time off from the building principal [Doc. 18-4; Doc. 18-5, p. 32]. A separate letter from Knight to Holly reiterated and made it abundantly clear that Holly's FMLA leave expired on December 11, 2020, and that she would no longer be protected under the FMLA after that date [Doc. 18-4].

Holly made no immediate effort to contact her building principal, Lakesha Batty ("Batty"), after receiving Knight's email or letter [Doc. 18-5, pp. 32-33]. Holly contends that she had already spoken to Batty in early November 2020 and had obtained Batty's permission to take additional time off from work [Doc. 1, ¶22; Doc. 18-5, p. 33]. As such, she was not concerned about Knight's email or letter and simply assumed that since she had already spoken to Batty (or claimed to have spoken to Batty), then she had no reason to connect with Batty again [Doc. 18-5, p. 33]. To be clear, Holly did not respond to Knight's communications – she ignored them but did not tell Knight or anyone else at VWSD why she was ignoring Knight.

Batty, the Principal at VIS, acknowledged that she spoke to Holly about Holly taking additional time off from work, but she explained that the call was not in November and was instead very "close to when [Holly] was supposed to return back to work" [Doc. 18-6, pp. 27-30]. Batty also recalled that Holly never asked for additional time off and simply told that Batty that her doctor had suggested that she take additional days away from work [Doc. 18-6, pp. 34-35].

Not having received a response from Holly after Knight's communications to her, Dr. Lennie Little ("Little"), VWSD's Human Resources Director, called Holly on December 14, 2020, as a courtesy to ask why Holly had not returned to work [Doc. 1, ¶28; Doc. 18-5, p. 34; Exhibit "B"]. Little advised Holly that her FMLA leave had expired and that she needed to contact Batty if she needed additional time off from work [Exhibit "B"]. Holly indicated that she "understood that her leave time had expired and that she needed to contact her Principal" [Exhibit "B"].

Holly claims that after her call with Little she attempted to call Batty but that Batty did not answer and, having not been able to reach Batty, called Cedric Magee ("Magee"), VWSD's Assistant Superintendent who had not been involved in any of the previous discussions about Holly's FMLA leave or her potential need for additional time off from work [Doc 1, ¶31; Doc. 18-5, pp. 34-36]. Holly subsequently emailed Magee on December 17, 2020, to follow up with him, but she (1) did not return to work on December 14, 15, 16, or 17 and (2) had, in fact, been terminated as of December 15, 2020 [Doc. 1, ¶6; Doc. 18-7].

Holly submitted a formal request for a due process hearing on December 22, 2020 [Doc. 18-8]. She admits in her Complaint that thereafter her attorney and VWSD's attorney "attempted, albeit unsuccessfully, to come to terms for a post-deprivation due process hearing," although she contends that she was told that any such hearing would have "parameters" [Doc. 1, ¶10]. Only half of her claim is accurate – VWSD, by and through its Board attorney, offered to provide Holly a

due process hearing and attempted to schedule the hearing but did not limit Holly's ability to provide her side of the story to the VWSD School Board. In fact, VWSD's attorney offered to allow Holly "an opportunity to be heard by the Board of Trustees as to why her job should not have been terminated according to the FMLA" [Doc. 18-9]. Holly never availed herself of that opportunity.

C. ANALYSIS

1. *Standard of Review*

Summary judgment is considered a "useful device," but it "must be used cautiously or it may lead to drastic and lethal results." *Murrell v.* Bennett, 615 F.2d 306, 309 (5th Cir. 1980). Because of that, summary judgment may only be granted if the "movant shows that there is no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law." F.R.C.P. 56(a). The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In considering a motion for summary judgment, the Court must resolve all factual controversies in favor of the non-movant. *Little v Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). When factual controversies exist, the Court may "not make credibility determinations or weigh the evidence" as it is the sole province of the jury to do so. *Reeves v. Sanderson Plumb. Prods., Inc.*, 530 U.S. 133, 150 (2000). Instead, all evidence presented by the non-movant must be believed, and all justifiable inferences are to be drawn in the non-movant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). It is for the jury, not the Court at the summary judgment stage, to reach conclusions from the evidence. *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1124 (5th Cir. 1978).

2. *Even if the Court were inclined to grant judgment to the plaintiff on her claims against the defendants, dismissal of the entire case would be improper*

VWSD filed a Counterclaim as a part of its Answer to the Complaint. The plaintiff has not moved for dismissal of the Counterclaim in her Motion. Even if the Court were inclined to grant the relief sought in the plaintiff's Motion, the entire case should not be dismissed.

3. *Holly's procedural due process claims are without merit*

Due process requires notice and an opportunity to respond before a governmental employer may remove a person's property interest. *Boone v. Long Beach Sch. Dist.*, 2020 WL 12918242, *9 (S.D. Miss. Mar. 9, 2020). Courts have routinely agreed that "[d]ue process is not a technical conception with a fixed content unrelated to time, place and circumstances." *McMullen v. Starkville Oktibbeha Consolidated Sch. Dist.*, 200 F.Supp.3d 649, 656 (N.D. Miss. 2016). Due process is, instead, "flexible" and only "calls for such procedural protections as the particular situation demands." *Id.* While "some kind of a hearing" is the norm before public employment may be terminated, "elaborate pretermination proceedings are not mandated because of the excessive burden they would put on the government's interest in quickly removing an unsatisfactory employee." *Id.* All that is required is "oral or written notice of" the reasons for the employment action, "an explanation of the employer's evidence," and "an opportunity to present [the employee's] side of the story." *Id.; see also Parks v. Terrebonne Parish Consolidated Gov't,* 759 F.Appx 220, 225 (5th Cir. 2019) (noting that "[p]re-termination proceedings do not need to be elaborate; the Supreme Court has pointed out that the formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings"). Pre-termination hearings are, after all, simply "an initial check against mistaken decisions." *Id.*

In *Parks*, the plaintiff spoke to several administrators after he failed a drug test about his options – retire, resign, or be terminated. *Id.* at 222-23. The Court noted that it was "undisputed that [the plaintiff] had notice of his positive test results and impending termination" and that he had "several opportunities to be heard." *Id.* at 225-26. In other words, the plaintiff "had notice of his impending termination, he knew the evidence against him, and he had the opportunity to be heard," all of which, the Court concluded, resulted in the plaintiff receiving adequate pre-termination due process. *Id.* at 226; *see also Browning v. City of Odessa*, 990 F.2d 842, 844-45 (5th Cir. 1993) (finding a thirty minute meeting between the plaintiff and his superior constated an adequate pre-termination hearing "since a full evidentiary post-termination hearing was available").

In *Chiles v. Morgan*, 53 F.3d 1281, *1 (5th Cir. 1995), the plaintiff missed several days of work, after which he met with several members of the governmental employer's management staff to address his work attendance. The plaintiff was later suspended (and subsequently resigned) because of his unexcused absences and insubordination for a separate incident. *Id.* At the summary judgment stage, the governmental employer argued that the meeting between the plaintiff and management constituted an adequate pre-termination due process hearing since the plaintiff was made aware of the charges against him and had an opportunity to respond. *Id.* at *2. The Court disagreed, finding that there were unresolved fact issues about the adequacy of the pre-termination due process involved in the case. *Id.*

When the pre-termination process is not robust, the employee is entitled to "a full hearing after termination." *Id.* An employee, however, who fails to take advantage of a post-termination due process hearing cannot dispute the adequacy of those proceedings." *Chiles*, 53 F.3d at *2; *see also Wheeler v. Williams*, 2018 WL 6204444, *6 (N.D. Miss. Nov. 27, 2018) (holding that "no

denial of procedural due process occurs where a person has failed to utilize the state procedures available to him"); *Myrick v. City of Dallas*, 810 F.2d 1382 (5th Cir. 1987) (commenting that the plaintiff "cannot skip an available state remedy and then argue that the deprivation by the state was the inadequacy or lack of the skipped remedy").

In the instant matter, Holly received both oral and written notice that she was running out of (and had, in fact, actually run out of) protected FMLA leave, was given oral and written notice that she would be terminated if she did not return to work, and had several opportunities to speak to members of VWSD's administrative staff – the Benefits Manager, the HR Director, and the Assistant Superintendent. While no "elaborate" or formal hearing was held before Holly was terminated, the basic components of pre-termination due process were satisfied or, at a minimum, there is sufficient evidence in the record to create a fact question about the adequacy of the due process rights afforded to her.

The same is true for the post-termination due process. Holly has offered her version of her post-termination efforts to obtain a hearing with VWSD's Board, claiming that her attorney was told that she could have, at most, five to ten minutes to give her side of the story. Document 18-9, however, contains no limitations whatsoever on Holly's post-termination hearing and plainly states that she had the right and opportunity to present her evidence to the Board. The only fact that is not in dispute is that Holly did not take VWSD up on the offer for her to present her side of the story.

Regardless, one of two things is true: (1) either Holly received adequate pre- and post-termination due process under all the facts presented or (2) there are fact questions for a jury to decide about the sufficiency of the due process afforded to her. Either way, summary judgment should not be granted to Holly in these circumstances.

4. *Holly's substantive due process claim is without merit*

Procedural due process claims focus "on the procedures the government must follow before it deprives a person of life, liberty, or property," while "substantive due process asks whether the government has an adequate reason for the deprivation." *McMullen,* 200 F.Supp.3d at 658. As several Courts have noted, "[o]nly the most egregious official conduct can be said to be arbitrary in the Constitutional sense." *Owens v. Calhoun Co. Sch. Dist.*, 2012 WL 12878170, *9 (N.D. Miss. Sept. 27, 2012). Showing that "a termination in the governmental employment context was arbitrary and capricious is a high bar: the plaintiff must show that the decision was made without a rational connection between the known facts and the decision or between the found facts and the evidence. That is, the abuse of power by the state official shocks the conscience." *Id.*

Courts, including the United States Supreme Court, have "been extremely reluctant to recognize causes of action under the substantive due process clause." *Id.* The reason for that reluctance is, as one Court described it, "evident: there are numerous forms of governmental action which can be said to be 'arbitrary' or 'capricious' in a general sense, but federal courts would do little else if they were required to constantly second-guess the decisions of governmental actors in this regard." *Id.*

Even taking Holly's proof at face value and not giving the defendants any favorable inferences, at worst, the evidence reveals that someone within the VWSD failed to communicate with the relevant decisionmakers about Holly's attempt to secure additional time off from work. If Holly's proof is to be believed, she spoke to Batty and convinced Batty to agree to allow her to take off more days, but somewhere between talking to Batty and her termination, there was a lack of internal communication about that approval. Even if all of that were true, which is disputed, the proof falls well short of the "shock the conscience" threshold.

As this Court is well aware, however, all of the evidence must be viewed in the light most favorable to the defendants, the non-movants. The evidence viewed in that light reveals that (1) while Holly claims she spoke to Batty in early November, Batty recalled speaking to Holly much closer in time to Holly's termination; (2) Holly received additional communications thereafter from VWSD about the need to obtain approval for time off from Batty, and she ignored them; and (3) when contacted in December 2020 about returning to work, Holly told Little that she understood she needed to communicate with Batty, not that she had already done so.

At a minimum, there is enough fault to go around and questions of material fact that make it improper to grant Holly's motion, particularly on her substantive due process claim.

5. *Holly's ADA claim is without merit*

Holly carries the initial burden to establish a *prima facie* case of disability discrimination and can only do so by showing (1) that she has a disability, (2) that she was qualified for the job, and (3) that she suffered an adverse employment decision on account of her disability. *Clark v. Champion Nat'l Sec., Inc.*, 952 F.3d 570, 582 (5th Cir. 2020). Holly cannot establish any of those criteria.

First, the term "disability" is defined under federal law as (i) a physical or mental impairment that substantially limits one or more major life activities, (ii) a record of such an impairment, or (iii) being regarded as having such an impairment." 29 CFR §1630.2(g). A "physical impairment, standing alone, is not necessarily a disability as contemplated by the ADA."[1] *Dutcher v. Ingalls Shipbuilding*, 53 F.3d 723, 725 (5th Cir. 1995). The impairment must "substantially limit" a major life activity in order for the ADA to apply. *Id.* Major life activities

[1]The EEOC recognizes that "pregnancy itself is not a disability under the ADA." https://www.eeoc.gov/pregnancy-discrimination#:~:text=While%20pregnancy%20itself%20is%20not,for%20the%20pregnancy%2Drelated%20disability

can include such activities as "[c]aring for oneself, performing manual tasks, seeing, hearing, eating, . . . and working." 29 CFR §1630.2(i). While working is certainly one of the several categories identified as a major life activity, Courts have held, with regard to the activity of working, that "[s]ubstantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." *Dutcher*, 53 F.3d at 727.

Moreover, temporary injuries like the ones Holly suffered during the childbirth delivery procedure are not covered by the ADA. *O'Quinn v. Hallmark Toyota-BMW, Inc.*, 2008 WL 11380130, *2 (S.D. Miss. Feb. 7, 2008). In *Evans v. City of Dallas*, 861 F.2d 846, 852-53 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit, analyzing a case under the Rehabilitation Act which is analogous to the ADA, ruled that an individual who had undergone knee surgery was not disabled under the Rehabilitation Act. The Court explained that while the plaintiff's "injury may have limited [his] life activities during his recuperation, Plaintiff does not allege that it continues to do so; nor does he contend that others regard him as having an impairment that continues to do so." *Id.*

Holly argues that she was disabled under the ADA, primarily because she was off work for twelve weeks, and she claims that she "submitted documentation that she had a disability" [Doc. 19, p. 15]. Holly, however, has not set forth sufficient evidence to show that she was or continues to be "substantially limited" in her ability to perform any of the various positions at VIS, including her own. The only evidence, including that contained in Holly's documents [Doc. 18-3], is that she was off work for a short period of time after child delivery. There is, at a minimum, a question

of fact as to whether Holly meets the definition of "disabled" under the ADA, and the Court should deny Holly's motion.

Second, Holly was not qualified for the job. To be considered a "qualified individual with a disability" under the ADA, Holly must show that, with or without reasonable accommodation, she could perform the essential functions of her job. *O'Quinn*, 2008 WL 11380130 at *2 (S.D. Miss. Feb. 7, 2008). An employee like Holly who requests medical leave "is by nature arguing that [s]he cannot perform the functions of the job." *Acker v. General Motors, LLC*, 853 F.3d 784, 791-92 (5th Cir. 2017). A request for FMLA leave "is not a request for a reasonable accommodation under the ADA." *Id.* at 791.

Holly claims that she was requesting an accommodation in the form of more time off from work and categorizes her request as one under the ADA and not the FMLA. This case is akin to one recently decided by the United States Court of Appeals for the Eleventh Circuit. In that action, the plaintiff informed her employer that she needed to work remotely for several months following her c-section childbirth. *Owens v. Georgia*, 52 F.4th 1327, 1330 (11th Cir. 2022). The plaintiff also submitted doctor's notes regarding the need for remote work, but neither the plaintiff nor her doctors provided the employer with any "detail about the nature of [the plaintiff's medical] complications or how they would be accommodated by teleworking." *Id.* The Court reiterated that an employee must both make a specific demand for an accommodation and demonstrate that the accommodation is reasonable. *Id.* at 1334. The second step can only be satisfied by providing "enough information to allow an employer to understand how the accommodation would address the limitations [the plaintiff's] disability presents." *Id.* The plaintiff in *Owens* failed to satisfy the second prong. *Id.*

Notwithstanding Holly's arguments, the evidence in the record is ambiguous, at best. Holly never asked for an accommodation, even though Courts have repeatedly held that "[e]mployees who require accommodation due to a disability are responsible for requesting a reasonable accommodation." *Acker*, 853 F.3d at 791. Holly never asked for time off – she simply told VWSD that her doctor had pushed out her return to work date. Additionally, Holly's request failed to put VWSD on notice of how more time off from work would address whatever medical ailments Holly was still experiencing from her c-section delivery. At a minimum, there is a fact question about the nature and sufficiency of Holly's request that prevents this Court from granting her motion.

Finally, Holly was not terminated because of a disability. As set out above, Holly did not have a disability under the ADA, which means that the defendants could not have taken an adverse action against her on that basis.

For all of those reasons, Holly's ADA claim fails, and her motion should be denied.

6. *Holly's breach of contract claim is duplicative of her other claims*

Holly's "common law breach of contract" claim is merely a rephrasing or repurposing of her prior due process and ADA claims. The Complaint specifically asserts in connection with this claim that (1) VWSD breached her contract by not providing her a pre-deprivation due process hearing and (2) not giving her a reasonable accommodation" [Doc. 1, ¶70].

For the same reasons as those set out above, there are fact questions which preclude a ruling in favor of Holly and which mandate denial of her motion.

D. CONCLUSION

There are fact questions surrounding each of Holly's claims as outlined above. Given those questions of fact, this Court should deny Holly's motion and allow this matter to be tried by a jury.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Timothy M. Peeples
OF COUNSEL

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CERTIFICATE OF SERVICE

I do hereby certify that on September 11, 2023, I served the foregoing pleading using the Court's electronic filing system which sent notice to all counsel of record.

/s/Timothy M. Peeples
TIMOTHY M. PEEPLES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

UNOPPOSED MOTION FOR EXTENSION TO FILE RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COME NOW the defendants and file the following Unopposed Motion for Extension to File Response to the plaintiff's Motion for Summary Judgment:

1. The plaintiff filed a Motion for Summary Judgment and Memorandum Brief on August 21, 2023 [Docs. 18 & 19].

2. The defendants filed their response on September 11, 2023.

3. The plaintiff's rebuttal is due September 18, 2023.

4. The defendant, by and through its attorney, is agreeable to a one-week extension for the plaintiff to file her rebuttal.

5. The plaintiff, accordingly, asks the Court to allow her until September 25, 2023, in which to file her rebuttal.

6. The foregoing Motion is not being filed for improper purposes or to unreasonably delay this matter.

WHEREFORE, PREMISES CONSIDERED, the defendants request that this Court enter an Order extending the time for plaintiff to respond to the defendant's response to her Motion for Summary Judgment.

Respectfully submitted,

By: /s/ Keith B. French
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2023, I electronically filed the above foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Keith B. French
Keith B. French

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY PLAINTIFF

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. DEFENDANTS

AGREED ORDER GRANTING UNOPPOSED MOTION FOR EXTENSION

CAME BEFORE THIS COURT the Unopposed Motion for Extension to File Rebuttal to Defendant's Response to Plaintiff's Motion for Summary Judgment filed by Plaintiff, and the Court, noting that the Motion is unopposed, hereby GRANTS the Motion.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the plaintiff shall have until September 25, 2023, in which to file her Rebuttal to Defendants' Response to Plaintiff's Motion for Summary Judgment.

SO ORDERED, this, the 18th day of September, 2023.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

Motion to Strike Portions of Dr. Lennie Little's Affidavit

Jessica Holly ("Plaintiff"), by and through counsel, files this Motion to strike portions of Dr. Lennie Little's Affidavit attached to Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment. Namely, Plaintiff would like to strike statements made in Paragraph No. 3 of the affidavit which asserts statements made by Plaintiff, claiming that in a phone conversation Plaintiff "notified [him] that she understood her leave time had expired and that she needed to contact her Principal."

The Plaintiff objects to this testimony and it should be stricken from the summary judgment record, as the statement constitutes garden-variety hearsay, and furthermore, is not based on personal knowledge, as required by F.R.E. 801(c) governing summary judgment affidavit being based on personal knowledge.

Pursuant to the foregoing arguments, Plaintiff Jessica Holly respectfully requests that this Court strike the statements made in Paragraph No. 3 of Dr. Little's Affidavit.

Date: September 21, 2023 Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and the foregoing was served upon counsel via electronic filing.

DATED this 21st day of September, 2023.

/s/ Keith B. French
Keith B. French

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY **PLAINTIFF**

v. **CASE NO. 3:22-CV-265-CWR-LGI**

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. **DEFENDANTS**

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Jessica Holly ("Plaintiff"), by and through counsel, files this Reply in Support of its Memorandum in Support of her Rule 56(a) Motion for Summary against Defendant Vicksburg Warren School District (the "District"). In further support of her Motion, Plaintiff would show the Court the following:

I. REPLY INTRODUCTION

Defendant's Response to Plaintiff's Motion ("Response") is unsupported and contradicts the evidence and testimony established in this case.

Prior to Plaintiff's termination, Plaintiff requested a reasonable accommodation of five days off work under the ADA to recover from injuries sustained during surgery while on FMLA. The District conditioned approval upon the principal's consent. Defendant's termination letter based Plaintiff's termination on her alleged failure to attend work without prior approval the day after her FMLA expired. Without providing any support for its assertion, Defendant's Response argued that Plaintiff ignored the District's instruction and attempted to supplement its termination letter with this additional motive for termination.

Plaintiff's principal was made aware of her request for reasonable accommodation in the form of time off work on at least two occasions: in a private telephone call with Plaintiff and in the District's email to Plaintiff notifying her of the procedures for obtaining additional leave. Defendant's Response is silent on whether Plaintiff received approval from Ms. Batty. Instead, Defendant argued that Plaintiff "unilaterally announced" her intention to take additional leave. But Defendant ignored the fact that Plaintiff's principal, Lakeisha Batty, testified that she was made aware of the request and she did not oppose it. Ms. Batty clearly indicated in her deposition that she did not believe Plaintiff could not work after her request for a reasonable accommodation, and that was the basis for her termination. Her testimony negates the termination letter, which creates the foundation for Plaintiff's claims.

Before Plaintiff was terminated, Defendant did not provide notice, an explanation of the basis for her termination, or an opportunity for Plaintiff to defend herself. Defendant also offered limited opportunities for Plaintiff to adequately defend herself after her termination. Defendant's failure to do so violated Plaintiff's due process rights.

Further, when her employment contract was terminated and she was fired, Plaintiff had a physical impairment that substantially limited her ability to work; her ability to work was a major life activity; and, her impairment substantially limited her major life's activity of being able to work. She was, according to her doctor's orders, to remain homebound for one additional week to monitor her bowel function, constipation, and appetite loss as a result of a serious ailment.

Just having completed twelve weeks Family Medical Leave Act leave, Jessica Holly had a record of her being unable to come to work. In light of the fact Ms. Batty's testimony stated she based her recommendation to terminate Plaintiff on being unable to come to work or perform work

functions, she was regarded by the school district as having a physical impairment and terminated because of it. As a result, Defendant, through Ms. Batty's testimony, conceded to Plaintiff's ADA claims.

II. ARGUMENT

First, Defendant does not dispute that due process affords Plaintiff both a pre-termination and post-termination hearing. Defendant points out that Plaintiff was entitled to a minimum pre-termination process of (1) "oral or written notice of the charges against her," (2) "an explanation of the employer's evidence," and (3) "an opportunity to present her side of the story." *McMullen v. Starkville Oktibbeha Consol. Sch. Dist.*, 200 F. Supp. 3d 649, 657 (N.D. Miss. 2016). An explanation of the evidence against Plaintiff required, at a minimum, that Plaintiff: (a) be advised of the cause or causes for his termination in sufficient detail to fairly enable [her] to show any error that may exist; [and,] (b) [s]he be advised of the names and the nature of the testimony of witnesses against [her]." *Ferguson v. Thomas*, 430 F. 2d 852, 856 (5th Cir. 1970). The right to be heard required providing Plaintiff with the option of a hearing prior to the deprivation of her employment. *Wilson v. Health & Hospital Corp.*, 620 F. 2d 1201, 1215 (7th Cir. 1980). None of this occurred prior to Plaintiff's termination, however.

The District's email informing Plaintiff that she needed to seek prior approval from her principal to receive time off for her disability did not constitute the due process contemplated in *McMullen*. The District's email never gave notice that Plaintiff would be terminated or that she was being considered for termination based on misconduct. At that time, Plaintiff had not been accused of violating any policy as she had not missed work outside of FMLA. The email merely

notified Plaintiff that she needed to seek approval from her principal for additional leave outside of FMLA. *See* Pl.'s Ex. D.

Defendant has not presented any evidence showing that, after Plaintiff had taken her additional leave, but before Plaintiff was terminated, she was provided written notice of the "charges", an explanation of the evidence against her, and an opportunity to present her story in person or in writing. *See Loudermill*, 470 U.S. at 546, 105 S.Ct. 1487. She was simply provided notice that she was terminated a day after she did not show up for work. Providing such a process would have prevented the hypothetical "worst case scenario" Defendant presented claiming that, "at worst," internal miscommunication led to Plaintiff's termination. But Plaintiff was never provided the opportunity to make her case.

Second, Defendant claims that Plaintiff's substantive due process claim must fail because "at worst, the evidence reveals that someone within the VWSD failed to communicate with the relevant decisionmakers about Holly's attempt to secure additional time off from work." Docket No. 23 at 8. This position ignored the reasons for termination as articulated in the termination letter in contrast to testimony provided by Lakeisha Batty, whose recommendation to terminate Plaintiff was adopted. The termination letter stated Plaintiff was terminated for failure to report to work a single day after her FMLA was exhausted. Pl.'s Ex. G - Termination Letter.

Ms. Batty testified that she spoke to Plaintiff about Plaintiff's doctor's request that she take additional time off. Ms. Batty did not object to the leave. Batty Dep. Transcr. at 28: 20-25; 29:1-2; 35:1-5. Further, Ms. Batty testified that she recommended terminating Plaintiff because she could not do her job (due to her disability) and she needed to replace Plaintiff with someone who could. *Id*. at 49:4-23. The reasons for termination as articulated in the termination letter are

contradicted by the record and the testimony of Defendant's witness. Because the facts and evidence starkly contrast the reasons upon which Defendant based its decision to terminate Plaintiff, the termination was arbitrary and capricious in violation of Plaintiff's substantive due process rights.

Finally, Plaintiff has met her burden to prove her discrimination claim. Plaintiff's doctor based her disability on the botched surgery during pregnancy, not merely the pregnancy itself. Even if the Court found that Plaintiff's injuries during her surgery did not qualify as a disability within the meaning of the ADA, Ms. Batty's testimony clearly shows that she regarded Plaintiff's condition as such. 42 U.S.C. § 12102(1) (A-C). A plaintiff is "regarded as" being disabled if she "(1) has an impairment that is not substantially limiting but which the employer perceives as substantially limiting, (2) has an impairment that is substantially limiting only because of the attitudes of others, or (3) has no impairment but is perceived by the employer as having a substantially limiting impairment." *Waldrip v. Gen. Elec. Co.*, 325 F.3d 652, 657 (5th Cir. 2003) (citing *Gowesky v. Singing River Hosp. Sys.*, 321 F.3d 503, 508 (5th Cir.2003)); *see also Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 489, 119 S.Ct. 2139, 2149–50, 144 L.Ed.2d 450 (1999). Based on the principal's comments during her deposition when explaining the basis of Plaintiff's termination, she believed Plaintiff was unable to do her job. *See E.E.O.C. v. E.I. Du Pont de Nemours & Co.*, 480 F.3d 724, 729 (5th Cir. 2007) (finding that employee was regarded as disabled under ADA due to employer's belief that employee could not work).

Defendant's Response omits key provisions for proving a 'failure to accommodate' claim under the ADA. Defendant argues that in order to show she is a "qualified individual with a disability," Plaintiff must show she could perform the essential functions of her job and, because

she could not return to work for a week, she could not perform those functions. Docket No. 23 at 11. Defendant's standard for determining whether Plaintiff is a qualified individual is inaccurate, however. To prove she is a qualified individual, Plaintiff may show "1) that she could perform the essential functions of the job in spite of her disability or, if she could not, 2) that a reasonable accommodation of her disability would have enabled her to perform the essential functions of the job." *E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 697 (5th Cir. 2014) (citation omitted). Here, Plaintiff could perform the essential functions of her job as long as Defendant provided a mere five days of rest a week before the Christmas holiday break.

Moreover, Plaintiff has never asserted that the request was for FMLA leave. In fact, Defendant has made the argument that the reason for terminating Plaintiff was because the request could not be made pursuant to FMLA, since Plaintiff would have exhausted her FMLA leave at the time she would have started the five days off. Plaintiff has consistently stated that she had a disability and requested leave so that she can be able to work all her job duties.

In its response, Defendant misquotes *Acker v. General Motors*, LLC, 853 F.3d 784, 791-92 (5th Cir. 2017). *Acker* stated that a request for "**FMLA leave** is by nature arguing that he cannot perform the functions of the job." *Id*. (emphasis added). The court did not state a request for any leave disqualifies an individual from protections under the ADA, as Defendant argued. The plaintiff in *Acker* requested FMLA leave and argued that the request created protections under the ADA. *Id*. In support of its rationale that a reasonable accommodation under the ADA could not be triggered under the FMLA, the court highlighted that the two statutes are entirely separate statutory provisions with different enforceable rights. *Id*.

Notably, *Acker* made plain it supported the well-established rule that the request, had it been made pursuant to the ADA, would have been treated differently. *Id*. (citing *Rutt v. City of Reading, Pa.*, No. CIV.A. 13-4559, 2014 WL 5390428, at *4 (E.D. Pa. Oct. 22, 2014) (suggesting while a defendant's failure to consider an FMLA request would not support an ADA claim, a "***plaintiff's request for additional sick days following FMLA leave is a request for a reasonable accommodation***.") (citation omitted and emphasis added)). *See also Rogers v. Int'l Marine Terminals, Inc.*, 87 F.3d 755, 759 (5th Cir. 1996) (noting time off may constitute a request for reasonable accommodation); *Delaval v. PTech Drilling Tubulars*, L.L.C., 824 F.3d 476, 481 (5th Cir. 2016) (noting same as long as the request is not indefinite); U.S. EQUAL EMP'T OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT (2002), 2002 WL 31994335, at *14–17 (paid or unpaid leave).

The undisputed facts show that: Plaintiff requested time off under the ADA; received approval from her principal for additional days off work as a reasonable accommodation; her principal believed her condition prevented her from being able to come to work (perceived disability); her principal testified to recommending termination because she believed Plaintiff's condition prevented her from being able to return to work and assist in her job duties; the District terminated Plaintiff and wrote a letter falsely claiming that Plaintiff was terminated because she did not show up to work without prior approval; the reasons for that termination contradicts the principal's testimony and the evidence; and she received no pre-deprivation due process and limited post-deprivations due process.

On these facts, Plaintiff's Motion should be granted.

CONCLUSION

Pursuant to the foregoing arguments, Plaintiff Jessica Holly respectfully requests that this Court grant Plaintiff's Motion for Summary Judgment.

Date: September 21, 2023

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and the foregoing was served upon counsel via electronic filing.

DATED this 21st day of September, 2023.

/s/ Keith B. French
Keith B. French

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY — PLAINTIFF

VS. — CAUSE NO.: 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE AFFIDAVIT OF DR. LENNIE LITTLE

COME NOWthe defendants, by and through counsel, and respond to the plaintiff's Motion to Strike Affidavit of Dr. Lennie Little [Doc. 26], as follows:

1. The plaintiff's Motion must be denied as it is based upon a misreading of the hearsay rule contained in the Federal Rules of Civil Procedure.

2. The information in Dr. Little's Affidavit that the plaintiff seeks to strike is not hearsay at all under F.R.C.P. 801(d)(2).

3. The information the plaintiff seeks to strike constitutes the statement of an opposing party and should not be stricken.

4. Additionally, the plaintiff's argument that the information contained in Little's Affidavit is not based on Little's personal knowledge is misplaced[1]. Little's Affidavit makes it clear that the information in the document is based upon her recollection of her phone call with the plaintiff.

[1] The plaintiff's Motion suggests that there is a personal knowledge requirement for Affidavits under F.R.E. 801(c). The defendants assume the plaintiff is referring to F.R.C.P. 56(c)(4), and not F.R.E. 801(c).

WHEREFORE, PREMISES CONSIDERED, the defendants respectfully request that the Court deny the plaintiff's Motion to Strike.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: */s/ Timothy M. Peeples*
OF COUNSEL

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CERTIFICATE OF SERVICE

I, Timothy M. Peeples, of counsel for the defendants, do hereby certify that on October 2, 2023, I electronically filed the foregoing pleading or other document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

BY: */s/Timothy M. Peeples*
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DISTRICT

JESSICA HOLLY — PLAINTIFF

VS. — CIVIL ACTION NO. 3:22-CV-265-CWR-LGI

VICKSBURG WARREN SCHOOL DISTRICT; BRYAN PRATT; ALONZO STEVENS; JAMES STIRGUS, JR. — DEFENDANTS

DEFENDANTS' MEMORANDUM BRIEF IN OPPOSITION TO PLAITNIFF'S MOTION TO STRIKE PORTIONS OF DR. LENNIE LITTLE'S AFFIDAVIT

I. INTRODUCTION

The plaintiff's Motion to Strike has no basis and should be denied since the information the Motion seeks to strike is not hearsay. The information to which the plaintiff objects in the Affidavit of Dr. Lennie Little ("Little") is a statement attributed to the plaintiff, which means that it is not hearsay under F.R.E. 801(d)(2).

II. FACTUAL BACKGROUND

In support of its opposition to the plaintiff's Motion for Summary Judgment, the defendants filed an Affidavit from Little which states, in pertinent part:

> As a matter of courtesy, on or about December 14, I telephoned Jessica Holly to inform her that her FMLA allotted leave time had expired, and that she needed to contact the Principal of her building to discuss her current situation. During this conversation, Jessica Holly notified me that she understood her leave time had expired and that she needed to contact her Principal.

[Doc. 22-2].

III. ANALYSIS

A. The plaintiff's statements to Little are not hearsay

Hearsay is defined as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter

asserted in the statement." F.R.E. 801(c). However, some statements are not hearsay, including those made by a party-opponent. F.R.E. 801(d)(2). Under that Rule, the statement of an opposing party is not hearsay when it is "offered against an opposing party and: (A) was made by the party in an individual or representative capacity." F.R.E. 801(d)(2)(A); see also *U.S. v. Clemons*, 676 F.2d 122, 123 (5th Cir. 1982) (noting that "[a] statement is not inadmissible hearsay if it is the statement of a party against whom it is offered"). In *Clemons*, the Court allowed a deputy to testify about his conversations with the defendant, over the defendant's objection, pursuant to Rule 801(d)(2)(A). *Id.* The fact the opposing party denies making a statement "does not affect the threshold question of the admissibility of the purported statement." *Cobb v. State*, 734 So.2d 182, 185 (Miss.Ct.App. 1999).

The portions of Little' Affidavit which the plaintiff seeks to strike contain statements of an opposing party (the plaintiff). As such, the statements are not hearsay, and it is completely irrelevant whether the plaintiff denies making them. For purposes of the plaintiff's Motion, the question is not whether the substance of the statements in Lennie's Affidavit are true but, instead, whether they are admissible proof under F.R.C.P. 56. Pursuant to F.R.E. 801(d)(2) and applicable case law, the answer is yes, the statements are admissible. The plaintiff's Motion has no merit and must be denied.

B. Little's Affidavit is based on her personal knowledge

F.R.C.P. 56(c) requires any Affidavits submitted in support of or opposition to a summary judgment motion be based on "personal knowledge" of the affiant. Affidavits "need not contain any 'magic words' to satisfy this requirement and personal knowledge may be inferred based on an affiant's position in a company." *Caldarera v. Tennessee Log & Timber Homes, Inc.*, 2013 WL 5937396, *4 (S.D. Miss. Nov. 4, 2013).

There is no need to infer personal knowledge here. Paragraph 3 of Little's Affidavit plainly notes that she personally called the plaintiff and goes on to summarize Little's discussion with the plaintiff. Little does not suggest that someone told her about the conversation or that she read about it – Little is the one who called the plaintiff and spoke to the plaintiff. Her Affidavit is based solely upon her own experience and personal knowledge.

For all of those reasons, the plaintiff's Motion must be denied.

CONCLUSION

For all the foregoing reasons, the Court must deny plaintiff's Motion to Strike Portions of Dr. Lennie Little's Affidavit.

Respectfully submitted,

VICKSBURG WARREN SCHOOL DISTRICT

BY: /s/Timothy M. Peeples
OF COUNSEL

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CERTIFICATE OF SERVICE

I, Timothy M. Peeples, of counsel for Vicksburg Warren School District, do hereby certify that on October 2, 2023, I electronically filed the foregoing pleading or other document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

BY: /s/Timothy M. Peeples
TIMOTHY M. PEEPLES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY,

Plaintiff,

v.

VICKSBURG WARREN SCHOOL DISTRICT, et al.,

Defendants.

CAUSE NO. 3:22-CV-265-CWR-LGI

ORDER

Plaintiff Jessica Holly has moved to strike portions of Dr. Lennie Little's affidavit. Docket No. 26. Specifically, she wishes to exclude "statements made in Paragraph No. 3 of the affidavit," where Dr. Little says under penalty of perjury "that in a phone conversation Plaintiff 'notified [him] that she understood her leave time had expired and that she needed to contact her Principal.'" *Id.* at 1 (quoting Docket No. 22-2). Ms. Holly says these statements are hearsay and not based upon personal knowledge. *Id.*

As the defendants observe in their response brief, however, this portion of Dr. Little's affidavit is not subject to a hearsay objection because it recounts an opposing party's statement. *See* Fed. R. Evid. 801(d)(2). And, when read in context, it is evident that Dr. Little's affidavit reflects personal knowledge, as it summarizes a phone call Dr. Little participated in.

Accordingly, the motion to strike is denied.

SO ORDERED, this the 17th day of October, 2023.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY,

Plaintiff,

v.

VICKSBURG WARREN SCHOOL DISTRICT, et al.,

Defendants.

CAUSE NO. 3:22-CV-265-CWR-LGI

ORDER

Before the Court is Jessica Holly's motion for summary judgment. Docket No. 18. After reviewing the arguments, evidence, and applicable law, the motion will be granted in part and denied in part.

I. Factual and Procedural History

Jessica Holly started working for the Vicksburg Warren School District in 2000. She began as a high school English teacher and rose to Assistant Principal, earning her master's degree along the way. By 2020, Holly was the Assistant Principal at Vicksburg Intermediate School. She worked pursuant to a written employment contract.

In fall 2020, Holly sought time off to deliver and care for a new baby. She received permission to take a leave of absence under the Family and Medical Leave Act (FMLA). Because her FMLA leave was to end on Friday, December 11, 2020, her first day back to work would be Monday, December 14.

Holly's baby arrived via caesarian section on September 24. A doctor cut her bowel during the C-section, though, and a repair surgery called a "bowel resection" had to be conducted that day. As a result of the injury and surgery, Holly's doctor advised her to take another five days away from work to recover. On October 30, therefore, Holly gave the District a disability form in which her doctor explained the need for the additional time off. The information on the form will be discussed in more detail below.

On December 7, a District Human Resources employee advised Holly via email that because the additional days exceeded her FMLA leave, they required her Principal's approval.[1] Copied on that email were Human Resources Director Dr. Lennie Little and Principal Lakeisha Batty.

Holly was "not concerned" by the email, she says, because she had notified Principal Batty of her need for additional time on November 4. She claimed that Principal Batty had approved the extra days as long as Holly submitted the paperwork to the District. So Holly thought she had complied with everyone's requirements—the District's and the principal's—and would not have to work December 14 through 18.[2]

For her part, Principal Batty thought this "November 4" phone call might have occurred in December, a few days before Holly was supposed to return to work. But she confirmed that the call did happen. And when Holly sought the additional time off, Principal Batty testified, "my only response was okay."

This makes what happened next very puzzling.

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[1] The December 7 email also instructed Holly to have her doctor fill out a "return to work form" and provide it to the District before Holly came back. Holly was terminated before she returned to work, so the presence or absence of this form is immaterial to this suit.

[2] Because December 18 was the last working day of the District's calendar year, Holly's first day back at work would have been January 4, 2021.

When Holly did not report to work on December 14, Principal Batty recommended firing her. In a deposition, Principal Batty explained her reasoning in this way:

> I needed someone that was going to be at work. I needed help. I had gone pretty much -- again, I started in July, [Holly] had already been out quite a few days there, so many days that I couldn't even give a fair assessment performance. And so we need -- I need someone that was going to be at work. And her not coming to work, that's going to put me in a situation where I'm still playing catch-up.

Later on December 14, Dr. Little called Holly about her absence. Holly replied that she had already sent in her paperwork and received permission from her Principal. Dr. Little replied, "well, I don't know anything about that" and directed Holly to call Principal Batty. Holly did so. When she did not hear back, Holly called the District's Associate Superintendent. He did not know about the situation but promised to look into the matter.

On the afternoon of Thursday, December 17, Holly received a letter from District Superintendent Chad Shealy. It was dated December 15. Because "you have not reported back to work," the letter said, he would recommend to the School Board "on Thursday, December 19" that she be terminated. (The date was a typo; the Board's meeting was in truth scheduled for later that same evening, December 17.) The Superintendent added that the District "hoped that you would have been able to return to work," affirmed that "[t]he decision to terminate your employment in no way reflects upon your job performance," and "encourage[d]" Holly to re-apply for employment. A few hours after Holly received this letter, the School Board terminated her.

"It was devastating to be fired with a newborn the week before Christmas," Holly would later testify. She "worked for the School District half of my life," but after her termination "didn't even want to go out in public because I would have people constantly

asking me what happened, what did you do." Holly became depressed, sought counseling, and received prescription medications to treat her depression and the fibromyalgia, once dormant, that returned as a result of the stress.

On December 22, Holly made a written request for "a full due process hearing" on her termination. On February 12, 2021, the School Board's attorney wrote Holly's attorney to offer a "post-termination hearing" before the Board on February 25. Holly understood from her counsel that the Board was offering only "five or ten minutes after the board meeting." Believing that to be less than a full hearing, she did not pursue it. No hearing was held.

In 2022, Holly filed this suit against the District and Board Members Bryan Pratt, Alonzo Stevens, James Stirgus, Jr., Kimble Slaton, and Sally Bullard, all in their individual capacities. She claimed that the defendants violated her Fourteenth Amendment right to procedural due process (both "pre-deprivation" and "post-deprivation" due process), her Fourteenth Amendment right to substantive due process, the Americans with Disabilities Act, her written contract, and the covenant of good faith and fair dealing. She sought compensatory and punitive damages.

The District counterclaimed against Holly. It alleged that she was actually a teacher during the 2020-2021 school year, had missed "approximately 74 out of the 97 work days" in the fall 2020 semester, and had been overpaid by $10,147.86. It sought to recoup that sum. The parties then commenced discovery.

Holly now seeks summary judgment against the District on her due process, ADA, and breach of contract claims. No other dispositive motions were filed. As a result, even if Holly's motion is granted in its entirety, a jury trial is necessary to determine the amount of

Holly's damages, adjudicate her claims against the individual defendants, and adjudicate the District's counterclaim.

II. Legal Standard

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking to avoid summary judgment must identify admissible evidence in the record showing a fact dispute. *Id.* at 56(c)(1). "Once a summary judgment motion is made and properly supported, the nonmovant must go beyond the pleadings and designate specific facts in the record showing that there is a genuine issue for trial. Neither conclusory allegations nor unsubstantiated assertions will satisfy the nonmovant's burden." *Wallace v. Tex. Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996) (quotation marks and citations omitted).

The Court views the evidence and draws reasonable inferences in the light most favorable to the nonmovant. *Maddox v. Townsend and Sons, Inc.*, 639 F.3d 214, 216 (5th Cir. 2011). But the Court will not, "in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts." *McCallum Highlands, Ltd. v. Wash. Cap. Dus, Inc.*, 66 F.3d 89, 92 (5th Cir. 1995), *as revised on denial of reh'g*, 70 F.3d 26 (5th Cir. 1995).

III. Discussion

Each of Holly's claims will be addressed in turn.[3]

[3] For the due process sections that follow, it is undisputed that Holly "had a property interest/right" in her employment. *Wilson v. Coll. of the Mainland*, 476 F. App'x 758, 761 (5th Cir. 2012) (quotation marks and citation omitted). As such, the Court will analyze only the disputed portions of those claims.

A. Procedural Due Process

The District argues that Holly's procedural due process claim must be adjudicated by a jury. She has not yet proved a pre-deprivation due process violation, it says, because pre-deprivation due process requires only "oral or written notice of the reasons for the employment action, an explanation of the employer's evidence, and an opportunity to present the employee's side of the story." Docket No. 23 at 5 (quoting *McMullen v. Starkville Oktibbeha Consol. Sch. Dist.*, 200 F. Supp. 3d 649, 657 (N.D. Miss. 2016)).

The District has fairly stated the law. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). The "recognized principles of due process" are "adequate and timely notice and a meaningful opportunity to be heard." *Findeisen v. N. E. Indep. Sch. Dist.*, 749 F.2d 234, 237 (5th Cir. 1984). "Pre-termination proceedings do not need to be elaborate," but instead "should be an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Parks v. Terrebonne Par. Consol. Gov't*, 759 F. App'x 220, 225 (5th Cir. 2019) (quotation marks and citation omitted).

In this case, the summary-judgment record shows that the District did not adhere to these principles.

Holly did as she was instructed every step of the way. She provided the District with disability paperwork from her doctor in October. She secured her Principal's approval in November or, perhaps, early December. Those were the only two things Holly needed to be away from work on December 14, 15, 16, 17, and 18. Yet the District terminated her for purportedly-unexcused absences on December 14 and 15.

The most significant deficiency in the District's response is its absence of evidence that it afforded Holly a meaningful opportunity to be heard before it fired her. If she was fired for unexcused absences on December 14 and 15, when exactly was she supposed to explain that her absences were, in fact, excused? Dr. Little's affidavit doesn't say that their December 14 phone call was the proper time and place; no, Dr. Little directed Holly to the Principal. But Principal Batty didn't return Holly's call. And the Associate Superintendent Holly reached that day knew nothing of the situation.

The District is left with Superintendent Shealy's December 15 letter. The Superintendent's letter did warn Holly that he would recommend her termination to the School Board. The letter, however, didn't invite Holly to attend and present her side of the story. *See Greene v. Greenwood Pub. Sch. Dist.*, 890 F.3d 240, 242 (5th Cir. 2018) (finding pre-deprivation due process violation when Mississippi school district did not provide its employee with "an opportunity to address the Board"). It wasn't sent with sufficient time to enable her to attend; she received it a few hours before the Board meeting started.[4] The letter was factually incorrect; it told her the wrong date of the Board meeting. And parts of the letter suggested that her attendance would be futile because the decision was a foregone conclusion. Instead of saying "this recommendation in no way reflects upon your job performance," for example, the Superintendent said, "[t]he decision to terminate your

[4] As the Fifth Circuit once wrote in another educator's due process case, "there was no necessity for hasty action; no emergency existed. . . . [T]his record does not even reflect a situation in which a student or teacher was threatening to disrupt the orderly educational processes. . . . What might be considered a pressing concern may be handled by the simple expedient of a leave of absence pending a reasonably scheduled hearing. There is not the semblance of impracticability of such a hearing reflected in the record before us, nor is any suggested." *Findeisen*, 749 F.2d at 239 (citation omitted). And, as the *Greene* court explained, this is not the "rare and extraordinary situation[]" where "a postdeprivation hearing [alone] will satisfy due process requirements." 890 F.3d at 243 n.2 (quotation marks and citations omitted).

employment in no way reflects upon your job performance." The decision had already been made.

On this record, there is no genuine issue of material fact for a jury to resolve. The District did not provide Holly with adequate pre-deprivation due process. Holly's motion is, therefore, granted as to this claim.

As to Holly's post-deprivation due process claim, there is a genuine factual dispute on whether Holly "chose not to pursue" her post-deprivation remedies. *Greene*, 890 F.3d at 243 n.6 (citation omitted). A jury must consider the claim. Summary judgment is therefore denied on this cause of action.

B. Substantive Due Process

"Substantive due process bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Lewis v. Univ. of Tex. Med. Branch at Galveston*, 665 F.3d 625, 630 (5th Cir. 2011) (quotation marks and citation omitted). "To prove a substantive due process violation in this context, an employee must show that a public employer's decision so lacked a basis in fact that it could be said to have been made without professional judgment." *Jones v. La. Bd. of Sup'rs of Univ. of La. Sys.*, 809 F.3d 231, 240 (5th Cir. 2015) (quotation marks and citation omitted).

Here too, the Court denies Holly's motion for summary judgment. The facts as they stand suggest that the District's decision to terminate Holly was rendered without a moment's exercise of professional judgment. Put differently, the firing "was made without a rational connection between the known facts and the decision or between the found facts and the evidence." *Mills v. Garcia*, 650 F. App'x 873, 878 (5th Cir. 2016) (quotation marks and citation omitted).

The Court nevertheless declines to grant her relief on this issue. It is not clear if Holly must also prove that the District's decision "shocks the conscience." *Lewis*, 665 F.3d at 631 (quotation marks and citation omitted). That is the plaintiff's evidentiary burden when a government *official* invokes qualified immunity as a defense to a substantive due process claim. *See Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 839 (1998). And to be sure, the term has been used in official-capacity cases. *See Marco Outdoor Advert., Inc. v. Reg'l Transit Auth.*, 489 F.3d 669, 672 n.3 (5th Cir. 2007). But it is not plain whether that incorporation (or perhaps extension) was correct, as the cases those judgments rely upon mention "shocks the conscience" only after asking whether a "state *official* acted with culpability beyond mere negligence." *McClendon v. City of Columbia*, 305 F.3d 314, 325 (5th Cir. 2002) (emphasis added). And for that matter, some substantive due process cases completely fail to mention the "shocks the conscience" standard. *See Mills*, 650 F. App'x at 878; *see also Honore v. Douglas*, 833 F.2d 565 (5th Cir. 1987).

The Court therefore asks the parties to submit supplemental briefing addressing whether the "shocks the conscience" standard applies when a plaintiff seeks relief only against a government entity, rather than a government official who has invoked qualified immunity. A deadline will be set later. Holly's present motion is denied without prejudice.

C. Breach of Contract

Holly argues that her written employment contract incorporated her procedural due process rights. In this way, her breach of contract theory appears to duplicate her procedural due process theory.

Without more fulsome briefing on the differences between these claims, if any, the Court grants Holly's motion for summary judgment on her contractual claim for the same reasons it provided in adjudicating her procedural due process claim.

D. Americans with Disabilities Act

Holly has brought two kinds of ADA claims: one for discriminatory termination and one for a failure to accommodate her disability.

1. Discriminatory Termination

"In a discriminatory-termination action under the ADA, the employee may either present direct evidence that she was discriminated against because of her disability or alternatively proceed under the burden-shifting analysis first articulated in *McDonnell Douglas Corp. v. Green*." *Rodriguez v. Eli Lilly & Co.*, 820 F.3d 759, 764 (5th Cir. 2016) (quotation marks and citation omitted). Direct evidence is "evidence that, if believed, proves the fact of discriminatory animus without inference or presumption." *Id.* at 765 (quotation marks and citation omitted).

The evidence is straightforward. On October 30, Holly gave the District a "disability claim form" completed by her physician. The doctor listed the "disabling diagnoses," stated that Holly was "disabled" for "any occupation," listed her "functional limitations/restrictions," and provided an "anticipated length of disability." Armed with this knowledge, the District then instructed Holly on the step she would need to take to secure five additional days of leave; she had to obtain her Principal's permission. Holly had already followed that instruction. Her Principal admitted in sworn testimony that she approved Holly's request. When Holly took the leave, however, her Principal recommended

termination and the District fired her. The Principal later explained that she recommended termination based on Holly "not coming to work."

The District did not question Holly's evidence of disability or limitations at the time. It has submitted no evidence challenging that evidence now. It knew of her doctor's "disabling diagnoses" and professional determination that Holly was "disabled" for "any occupation." The District nevertheless argues that Holly has failed to establish each element of her prima facie case of discrimination. Docket No. 23 at 9-12.

In ADA cases sought to be established by "only circumstantial evidence," a plaintiff makes out a prima facie case by proving that "(1) she is disabled within the meaning of the ADA, (2) she was qualified for the job, and (3) she was fired on account of her disability." *Gosby v. Apache Indus. Servs.*, 30 F.4th 523, 525-26 (5th Cir. 2022) (citations omitted); *see Thompson v. Microsoft Corp.*, 2 F.4th 460, 470 (5th Cir. 2021). This is supposed to be a "light burden." *Gosby*, 30 F.4th at 527.

The Court respectfully disagrees with the District's arguments and, for reasons to be explained below, also disagrees with the District's proffered legal framework. The analysis begins with the elements of Holly's prima facie case.

a. Was Holly Disabled?

"In an ADA case, the relevant time for assessing the existence of a disability is the time of the adverse employment action." *E.E.O.C. v. Chevron Phillips Chem. Co., LP*, 570 F.3d 606, 618 (5th Cir. 2009) (citations omitted).

The record is uncontroverted that on the date of her termination, Holly had medical documentation of a disabling impairment. The doctor's finding that Holly was unable to work in "any occupation" was evidence that Holly was substantially limited in the major life

activity of working. *See* 42 U.S.C. § 12102(1). The District has not put forward evidence challenging that. It is enough to meet her burden on element one.

The District presses that Holly cannot have been disabled because her impairment was a temporary injury, rather than one of a continuing nature. Docket No. 23 at 10. It relies upon the Fifth Circuit's decision in *Evans v. City of Dallas*, 861 F.2d 846, 853 (5th Cir. 1988). This area of law has changed since 1988, however. *See Judge v. Landscape Forms, Inc.*, No. 1:12-CV-1117, 2014 WL 12502685, at *5 (W.D. Mich. Mar. 6, 2014) ("the Fourth Circuit concluded that the ADAAA 'abrogated' the earlier holdings that a temporary impairment cannot constitute a disability. *Summers v. Altarum Inst., Corp.*, 740 F.3d 325, 331 (4th Cir. 2014)"). The current text of the ADA makes the "transitory and minor" nature of an impairment relevant only when a plaintiff claims that they were "regarded as" having a disability. 42 U.S.C. § 12102(3)(B); *see also Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 302-03 (5th Cir. 2020). It is not material to cases like Holly's, where the disability is established by the medical records.

The District then says that Holly is no longer disabled. Docket No. 23 at 10. That is also irrelevant, given the Fifth Circuit's instruction in *Chevron Phillips* to look for evidence of disability at the time of the adverse employment action.

Because the evidence shows that Holly was disabled at the time she was fired, element one of the prima facie case is satisfied.

b. Was Holly Qualified?

Holly has also established the second part of her prima facie case. In response to Holly's record of 20 years of dutiful performance at the District, including in her capacity as Assistant Principal, the District has submitted no evidence disputing that she could "perform the essential functions of the employment position." *Chevron Phillips*, 570 F.3d at 615 n.7

(quoting 42 U.S.C. § 12111(8)). As in *Chevron Phillips*, the present record contains no evidence of unsatisfactory job reviews and no evidence "that [plaintiff] was discharged for performance-based reasons." *Id.*

c. Was Holly Fired on Account of her Disability?

Lastly, element three, a causal connection, is satisfied. Principal Batty recommended Holly's termination on December 14, the very first day of Holly's disability leave. Holly was fired three days later. The temporal distance between Holly's disability leave and her termination is, therefore, between zero and three days. That temporal proximity is more than sufficient to establish a causal link at the prima facie stage. *See Lyons*, 964 F.3d at 305; *Gosby*, 30 F.4th at 527 ("The evidence was that [plaintiff] was terminated immediately after an event that highlighted her ADA-protected disability.").

This is a natural segue to the Court's more foundational concern. It is not clear why the District has relied upon the burden-shifting *McDonnell Douglas* framework. This is not a circumstantial case. Holly's brief seeking summary judgment expressly argued that she has "direct evidence of discrimination." Docket No. 19 at 14.

Recall that "direct evidence" is "evidence that, if believed, proves the fact of discriminatory animus without inference or presumption." *Rodriguez*, 820 F.3d at 765 (quotation marks and citation omitted). The available evidence rises to that level. Principal Batty admitted in her deposition that she recommended Holly's termination because Holly wasn't "coming to work." The reason Holly hadn't come to work, though, was because she was on disability leave. No inference can be made other than this: Holly was fired because she took disability leave.

At the end of the analysis, the direct-versus-circumstantial debate is of no moment. Both paths lead to the same conclusion. There are no genuine issues of material fact that preclude summary judgment in Holly's favor on her ADA discriminatory termination claim. The jury will be instructed on liability and asked to assess damages on this claim.

2. Failure to Accommodate

The District's remaining arguments challenge Holly's "failure to accommodate" claim.

The ADA requires employers to "mak[e] reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability . . . ." 42 U.S.C. § 12112(b)(5)(A). In a failure-to-accommodate claim brought under this Act, "the plaintiff must show (1) he is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered employer; and (3) the employer failed to make reasonable accommodations for such known limitations." *Thompson*, 2 F.4th at 467 (quotation marks and citation omitted).

> Special words, like reasonable accommodation, need not be uttered, but the employee must explain that the proposed adjustment in working conditions is for a medical condition-related reason. Once an accommodation is requested, an employer must engage in the interactive process, or a flexible dialogue, with the employee with the goal of finding an appropriate accommodation for the limitation. An employer that fails to engage in the interactive process in good faith violates the ADA. Where the breakdown is traceable to the employee, though, there is no violation.

Delaval v. PTech Drilling Tubulars, L.L.C., 824 F.3d 476, 481 (5th Cir. 2016) (cleaned up).

Holly has presented evidence on all three elements of this claim. As discussed above, her record as an Assistant Principal in the District rendered her qualified, while her doctor's medical documentation rendered her disabled. There is no factual dispute on either of these

points. The District had actual knowledge of her diagnoses and "functional limitations/restrictions" on October 30. And there is no evidence that the District attempted to make, or in fact made, reasonable accommodations for her disabling condition.

The District makes three essentially factual arguments against liability on this claim. They are: (a) Holly "never asked for an accommodation," (b) "Holly never asked for time off," and (c) the District wasn't notified how more time off "would address whatever medical ailments Holly was still experiencing from her c-section delivery." Docket No. 23 at 12.

As for (a), though, Holly didn't need to utter magic words like, *I am requesting a reasonable accommodation under the Americans with Disabilities Act*. She satisfied the ADA by "explain[ing] that the proposed adjustment in working conditions is for a medical condition-related reason." *Delaval*, 824 F.3d at 481.

Regarding (b), the District's brief points to no evidence to support the proposition that Holly never asked for time off. The December 7 email from the District's Human Resources department reveals, in fact, that the District understood Holly's request as one for time off.

The District's third objection, (c), is its most complex. The Court devotes extra space and time to unpacking it.

The District has gone somewhat astray in diminishing Holly's condition as "whatever" ailments. Her doctor's disability paperwork was not vague. The District has also mischaracterized the record by blaming Holly's injuries on "her c-section delivery," as if it was a normal delivery. The additional days off were plainly for the bowel resection. But underneath the obfuscation is the kernel of an argument: how was the District supposed to know whether five days off would actually support Holly's recovery from a bowel resection?

But the ADA already answers that question. In these situations, "an employer must engage in the interactive process, or a flexible dialogue, with the employee with the goal of finding an appropriate accommodation for the limitation." *Delaval*, 824 F.3d at 481. In other words, *the District could have asked her*.

The District had plenty of time to inquire. It just never availed itself of the opportunity. Instead, it leapt to termination without any back-and-forth. And that "unwillingness to engage in a good faith interactive process is a violation of the ADA." *Thompson*, 2 F.4th at 469 (quotation marks and citation omitted).

The District's final substantive argument claims that Holly's case is "akin" to *Owens v. Governor's Office of Student Achievement*, 52 F.4th 1327 (11th Cir. 2022), a recent Rehabilitation Act decision.[5] There, the plaintiff claimed unspecified "complications" from her C-section, which included a blood transfusion; submitted a doctor's note stating that she "may" telework; and requested several months of telework. *Id.* at 1330. Her employer then asked her "to either submit additional documentation or return to the office." *Id.* She did neither of these and was terminated. *Id.*

In the ensuing litigation, her employer secured summary judgment on the plaintiff's Rehabilitation Act claim, and the Eleventh Circuit affirmed. *Id.* "The bottom line is that employees must give employers enough information to respond effectively to an accommodation request," the appellate court held. *Id.* at 1335. "Even so, we expect an employee's informational burden to be modest. . . . [A]n employee is not required to provide

[5] "The remedies, procedures, and rights available under the Rehabilitation Act parallel those available under the ADA. Thus, jurisprudence interpreting either section is applicable to both." *Cadena v. El Paso Cnty.*, 946 F.3d 717, 723 (5th Cir. 2020) (cleaned up).

her employer with detailed or private information about her disability to initiate the employer's duty to engage in an interactive assessment about the need for an accommodation." *Id.* at 1336.

Holly's case is distinguishable. Holly's doctor described the bowel resection, explained the resulting functional limitations, and found Holly unable to perform any occupation for the final five working days of the calendar year. "The link between the disability and the requested accommodation may often be obvious," the Eleventh Circuit wrote—and Holly's was such a case. *Id.* at 1335-36.[6] We know that with confidence because the District has not presented any evidence of ambiguity, confusion, or requests for clarification. It is not, therefore, akin to the employer in *Owens*. *See id.* at 1332 and 1337 (describing "no obvious limitation on functioning that arises from having had a c-section or a blood transfusion five or six weeks earlier" and explaining the employer's resulting request for "enough information . . . to evaluate Owens's accommodation request").

For these reasons, the Court grants Holly's motion for summary judgment on her ADA failure-to-accommodate claim. The jury will be instructed on liability and will determine an appropriate award of damages.

IV. Conclusion

The motion for summary judgment is granted in part and denied in part.

SO ORDERED, this the 8th day of December, 2023.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

[6] "Indeed, as the interpretive guidelines and courts have recognized, there may be some situations in which the reasonable accommodation is so obvious that a solution may be developed without either party consciously participating in an interactive process." *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir. 1999) (collecting authorities).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FEBUARY 2024 - CIVIL NON-JURY AND JURY CALENDAR

JUDGE CARLTON W. REEVES

The following non-jury and jury case in the Jackson Division of this District are set for trial and will be heard during the trial calendar that commences on **January 29, 2024**, Fifth Floor Courtroom No. 5B, UNITED STATES COURTHOUSE, 501 E. Court Street, Jackson Mississippi, with Judge Carlton W. Reeves presiding. **A probable trial date will be announced at or following the pretrial conferences.**

Attorneys are instructed to keep in touch with the Judge's chambers during the session to ascertain the status of the calendar. All counsel, witnesses, and clients are also expected to appear in Court and be ready for trial on reasonable notice. All orders of continuance must be granted by Judge Reeves.

Pursuant to Local Uniform Civil Rule 16(j)(l), a pretrial conference before Judge Carlton W. Reeves is hereby ordered in all cases on this calendar on **January 5, 2024**. The time is noted in the first column of page 3 of this calendar. The parties are reminded that subject to Local Rule 16(j)(6)(A), all trial counsel must attend and must have full settlement authority, as the Court will inquire about and may facilitate settlement discussions. **The Court further orders counsel to have the client or a representative of their client with full settlement authority present or, if not practicable, they shall be available by telephone. The parties must be prepared to engage in settlement discussions because the Court, in its discretion, may use the pretrial conference to facilitate such discussions. In addition, counsel SHALL BE PREPARED to present argument on ALL pending motions.**

PLEASE TAKE NOTICE:

1. **Motions Deadlines:** The time for filing of motions has been established by scheduling orders. No motions will be considered which are filed out of time as set forth in the scheduling order of the particular case.

2. **Motions *in Limine*:** Other than motions challenging another party's expert, motions *in limine* must be filed no later than **twenty-one calendar days** before the pretrial conference, and all responses must be filed no later than **fourteen calendar days** before the pretrial conference.

3. **Pretrial Order:** No later than noon the day before the pretrial conference, counsel for the parties are to prepare and e-mail to the Court a proposed joint pretrial order. In cases where a pretrial conference has been held and a pretrial order submitted, you are expected to bring the Court up to date as to any additional suggested amendments to the previous pretrial order no later than noon the day before trial. Please note Local Rule 16(j) governing pretrial conferences and use Official Form No. 3 for the format of all pretrial orders. The pretrial order controls the

subsequent course of action unless modified by the trial judge at or before the trial upon oral or written motion, to prevent manifest injustice. Local Rule 16(7).

4. **Witness and Exhibit Lists:** In addition to the lists of witnesses and exhibits contained in the pretrial order, the parties shall e-mail their exhibit list and witness list to the Court on the same date their jury instructions are submitted. **PLEASE FOLLOW FORMATS ATTACHED—*DO NOT* CUT & PASTE THIS INFORMATION FROM PRETRIAL ORDER. *DO NOT EMAIL ACTUAL EXHIBITS*. PLACE "EXHIBIT" LABELS ON "FRONT-FIRST" PAGE OF EACH EXHIBIT.** *The Courtroom Deputy does not have Exhibit labels*.

5. **Jury Instructions:** A date for submitting proposed jury instructions will be established at the pretrial conference for all jury cases. When due, the parties must e-mail a copy of their instructions to the Court and copy all counsel of record. **All instructions must include a list of authorities supporting the instruction on an attached page.**

6. **Bench Trials:** All parties trying bench trials must submit proposed findings of fact and conclusions of law no later than three (3) days before the trial.

7. **Courtroom Technology:** Judge Reeves Jackson Division courtroom is equipped with a document camera. There is no PC at the lectern, and parties wishing to use electronic document presentation software must bring it on their own laptops. Flat-screen monitors are provided for witness, parties, the Court and jurors. **Parties intending to use electronic document presentation are encouraged to schedule a visit to the courtroom the week before trial to consider logistics. Visits may be scheduled through Twana Summers (601) 608-4140 or Keithfer Robinson at (601) 608-4042.** Access to the courtroom is available when trials are not in session, and other conflicts may exist, so please do not wait until the day before trial to request a visit. Finally, use of courtroom presentation software does not eliminate the need to provide hard copies of pre-marked trial exhibits for the record.

8. **E-mailing Chambers:** All documents referenced in this notice that must be e-mailed to the Court should be addressed to: Reeves_Chambers@mssd.uscourts.gov. Attachments must be in **WordPerfect or Microsoft Word** format; the subject line must include the civil action number of the case; and all counsel of record should receive a copy.

9. **Failure to Appear:** Should a party or his attorney fail to appear or to comply with the directions set out herein, an ex parte hearing may be held and a judgment entered or sanctions imposed.

ARTHUR JOHNSTON, CLERK

s/ Twana Summers
Twana Summers, Courtroom Deputy Clerk
Jackson, Mississippi

JURY and NON-JURY CASES

PRETRIAL CONFERENCE
January 5, 2024

10:00 AM	J	3:19cv741	*Julius v. Luxury Inn and Suites, LLC (via zoom)*
10:30 AM	J	3:20cv58	*Chambers v. City of Jackson, MS, et al (via zoom)*
11:00 AM	J	3:21cv30	*Jones v. Sanders, et al*
1:30 PM	J	3:21cv648	*Alexander v. Mack*
2:30 PM	J	3:21cv750	*Starling, GM LLC*
3:30 AM	J	3:22cv265	*Holly v. Vicksburg Warren School District, et al*

NOTE: If you have any questions, please call Twana Summers (601) 608-4140.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
_____ DIVISION

_____ PLAINTIFF(S)

vs. CIVIL ACTION NO. _____

_____ DEFENDANT(S)

Plaintiff's or Defendant's EXHIBITS LIST

NUMBER	(DESCRIPTION)	SPONSOR	ID	EVID
P-1	BRIEFLY DESCRIBE EACH EXHIBIT	(Leave Blank)	(Leave Blank)	(Leave Blank)
or				
D-1	BRIEFLY DESCRIBE EACH EXHIBIT	(Leave Blank)	(Leave Blank)	(Leave Blank)

(LEAVE THESE COLUMNS BLANK [Sponsor, ID and Evid)

NOTE: The Second Page should keep table headings but does not need the style of the case, nor does it need a certificate of service.

NUMBER	(DESCRIPTION)	SPONSOR	ID	EVID

PLEASE USE THIS EXAMPLE*

YOU MUST PLACE "EXHIBIT" LABELS ON "FRONT-FIRST" PAGE OF EACH EXHIBIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
_____ DIVISION

_____ PLAINTIFF(S)

vs. CIVIL ACTION NO. _____

_____ DEFENDANT(S)

Plaintiff's or Defendant's WITNESS LIST

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PLEASE USE THIS EXAMPLE*

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JESSICA HOLLY,

Plaintiff,

v.

VICKSBURG WARREN SCHOOL DISTRICT, et al.,

Defendants.

CAUSE NO. 3:22-CV-265-CWR-LGI

ORDER OF DISMISSAL

The parties have announced to the Court a settlement of this case, and the Court desires that this matter be finally closed on its docket.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice as to all parties. If any party fails to execute or comply with the settlement agreement, an aggrieved party or parties may reopen the case to enforce the settlement agreement. If successful, all additional attorney's fees and costs from this date shall be awarded such aggrieved party or parties against the party failing to execute or comply with the settlement agreement. The Court specifically retains jurisdiction to enforce the settlement agreement.

SO ORDERED AND ADJUDGED, this the 31st day of January, 2024.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE